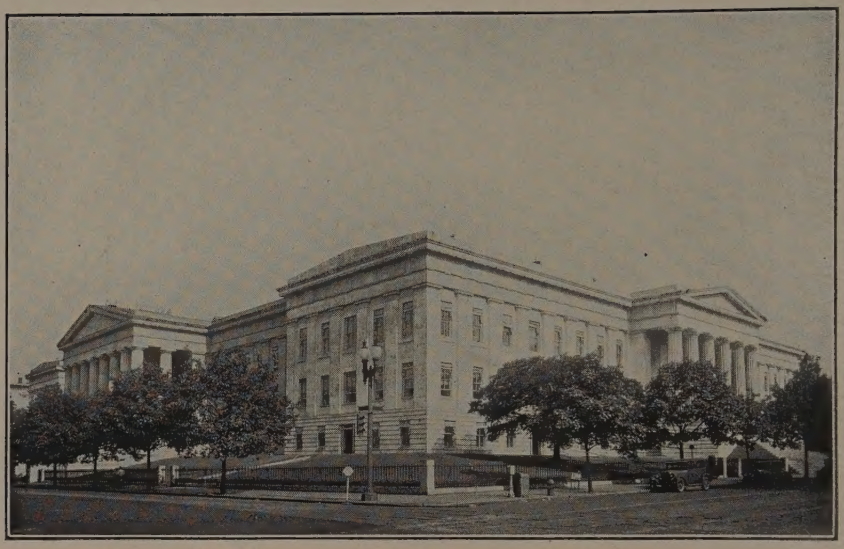

THE PATENT OFFICE AT WASHINGTON

One of the beautiful buildings in the nation's capital, where records are kept of hundreds of thousands of patents used in every branch of business.

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EXAMINING APPLICATIONS FOR PATENTS

A scene in the interior of the U. S. Patent Office. About 50,000 patents are issued during every year. The automotive and silk industries were in the lead in 1930.

THE CUMULATIVE LOOSE-LEAF BUSINESS ENCYCLOPEDIA

EDITOR-IN-CHIEF
HARRY T. COLLINGS, M.A., Ph.D., Sc.D.
Professor of Economics, University of Pennsylvania

VOLUME IX

Book I

COMMERCIAL LAW

By Utley E. Crane, LL.B., B.S.
Judge of the Municipal Court, Philadelphia

In Ten Volumes

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PREFACE

THE standard text-books on Commercial Law have invariably been designed for use in business colleges and commercial law schools, and have been limited in scope to an exposition of the legal principles involved in ordinary mercantile transactions.

Recognizing that the average business man has neither the opportunity nor inclination to pursue a systematic study of business law, this work has been specially prepared to meet the requirements of the busy man of affairs. Omission of any citation of authority and all legal technicalities has been for the purpose of rendering the work interesting as well as instructive.

It is incumbent upon the average layman to possess an accurate conception of his legal rights and obligations in other than the mere commercial relations of life. The industrial tendencies of the present age have made the enactment of numerous statutes regulating corporate and interstate business imperative. The law of common carriers, anti-trust legislation and kindred topics constitutes an important feature of this book.

The science of the law is necessarily as progressive as civilization itself, which never remains stationary. Since the publication of the first edition of "Business Law for Business Men" there have been enacted many statutes, both Federal and State, such as the National Currency Act, the Income Tax Law, Workingmen's Compensation Acts, Uniform Partnership Acts, etc., effecting important changes in the law, which are embodied in the following revision to render it presently authoritative.

Abstracts of the laws of all the states relating to Usury, Statutes of Limitation and Exemption have been added for the purpose of making the book of universal utility, and in the revision of the text, and the inclusion of new legal forms, the author has endeavored to avoid sectional emphasis, realizing that the intimate commercial relations existing between all parts of our country has created a demand for greater uniformity in the law and a text-book of business law that will be of national application.

UTLEY E. CRANE.

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COMMERCIAL LAW

BOOK I

THE FEDERAL WAGE AND HOUR LAW

On July 25, 1938, President Roosevelt approved an act whose official title is the Fair Labor Standards Act of 1938, but which is popularly termed the Federal Wage and Hour Law. The enactment of this measure throws upon the National Government three difficult tasks. The first of these is to prescribe accurately which employees are engaged in interstate commerce. The second is to determine the extent to which Congress intended exemptions to apply to certain types of these employees. The third problem is to see to it that employers establish and observe a certain maximum number of hours as a workweek for their employees and a certain minimum pay for them and that all potentially hazardous child labor is abolished.

Wages and Hours

What Congress by this law seeks is the fixing of "a ceiling of 40 hours on the standard workweek, a floor of 40 cents an hour under wages, and the abolition of child labor." This law, which went into effect October 24, 1938, applies to substantially eleven million gainfully employed persons in this country. During the first year of its operation it sets a minimum wage of 25 cents per hour and a maximum of 44 hours per workweek. That week may run from Monday through Sunday, or from Wednesday 7 a. m. to Wednesday 7 a. m., or for any other period of seven consecutive days. During the second year, it sets a minimum hourly wage of 30 cents with a maximum of 42 hours. During the next five years—from October 24, 1940, through October 23, 1945—the same wage minimum is prescribed, but the hour maximum is reduced to 40. After October 24, 1945, the law sets a 40-cent minimum hourly wage and a maximum of 40 hours for the workweek.

Overtime

The law does not forbid employment in excess of the standards above mentioned but it requires that compensation for such extra-time services be paid at 50 percent above the regular rate. The employer thus has two alternatives when extra work is necessary. He may employ additional help or he must pay for overtime at one and one-half times the regular hourly rate. Take the case of an employee regularly working at 50 cents per hour. If he works extra hours he must be paid 75 cents for each of those hours. In other words, the law controls the overtime pay of all affected employees, not merely those receiving pay at the minimum rate.

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Declared Policy

At the outset of the Act, Congress declares that by virtue of its constitutional authority "to regulate commerce among the several States" it proposes to correct (and as rapidly as possible to eliminate) certain bad labor conditions without substantially curtailing employment or earning power of employees. Bad labor conditions are declared to be those which are detrimental to the maintenance of the minimum standard of living necessary for the health, efficiency, and general well-being of workers in industries engaged in interstate commerce or in the production of goods for such commerce.

Classes of Employees Covered

In general three classes of employees are covered. They are (1) those engaged in producing, manufacturing, handling, or transporting goods which then move in interstate commerce; (2) those engaged in any process or occupation necessary to the production of such goods; and (3) persons actually engaged in interstate transportation, transmission, or communication of messages, persons, or things.

Exemptions

The law, on the other hand, does not apply to any of the following: (1) *bona fide* agricultural workers; (2) seamen; (3) employees of airline, street car, motorbus, or interurban railway companies; (4) employees of weekly or semi-weekly newspapers with a circulation of less than 3000, the major part of whose circulation is within the county of publication; (5) persons employed in any *bona fide* executive, administrative, or professional capacity, (6) employees of any retail or service establishment, the greater part of whose selling or servicing is in intrastate commerce; (7) persons engaged in fishing and in the fishing industry, and (8) persons who, in the area of production, handle, prepare, or can agricultural or garden products for market or who make dairy products.

In addition, employees of the following types of activities are not subject to the *hour* provisions of the Act: (1) railway, motorbus, and truck carriers who are regulated by the Interstate Commerce Commission; (2) concerns engaged in the first processing of milk, whey, skimmed milk or cream into dairy products; (3) the ginning and processing of cotton and cotton seed; (4) the processing of sugar beet, sugar molasses, sugar cane, or maple sap into raw sugar or sirup.

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The Administrator in charge of the law has authorization to exempt three general types of employees from the maximum hour provisions in certain cases. These have been officially described as follows:

"(1) Employees in industries designated by the Administrator as seasonal who may work up to 12 hours a day or 56 hours a week for not more than 14 weeks each year. For work over 12 hours a day or 56 hours a week, the overtime rate applies.

"(2) Employees of employers engaged in the first processing, canning, or packing of fresh fruits and vegetables, or in the first processing within the area of production of agricultural or horticultural commodities during seasonal operations, or in dressing poultry or slaughtering livestock, are exempt from all maximum hour provisions for a total of not more than 14 weeks each year.

"(3) Employees working under an agreement, made as a result of collective bargaining by representatives of employees certified as *bona fide* by the National Labor Relations Board, which provides for a maximum of 1000 hours' work in 26 weeks or which provides on an annual basis for a maximum of 2000 hours' work in 52 weeks. However, for work over 12 hours a day or 56 hours in a week, they must be paid at the rate of time and one-half."

Child Labor

The child labor provisions of that law do not apply to children employed as actors either in motion pictures or theatrical productions, or to children under 16 years of age employed by their parents or guardians in non-manufacturing or non-mining operations, or to children employed in agriculture during the time when they are not required under State law to attend school.

Broadly speaking a great deal of uncertainty exists as to the extent to which child labor is forbidden. This is due to the fact that the Chief of the Children's Bureau in the Department of Labor is authorized to make a careful study and investigation to determine what occupations are hazardous ones for children. Furthermore, after a report thereon has been completed a reasonable time will be allowed to employers for making necessary adjustments before the findings of the Chief of the Children's Bureau become final. If that official finds that such employment is not detrimental to the health or well-being of the employed child, a certificate will be issued to his or her employer. In all such determinations the Federal Government must be careful not to permit what is forbidden by State law. It may, however, attempt

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to forbid (in the interest of children's welfare) what State law permits. In order for such prohibition of, or interference with, the employment of children to be constitutional it must be limited to children employed in interstate commerce or the manufacture of goods destined for shipment in interstate commerce.

For the sake of illustration of the limits of the application of the law to children of various ages, let us take the case of children employed by a furniture manufacturing establishment whose products are shipped to every State in the Union. If the child is eighteen, there is no question of "child labor." If the child is sixteen or seventeen, his employment is forbidden if his task is hazardous or inimicable to his health or well-being. Otherwise his employment is permissible. If the child is fifteen or less, his employment is prohibited, regardless of whether the occupation is hazardous or not. On the other hand, a child fourteen or fifteen years old, can be legally employed by a company which is not engaged in manufacturing or mining, provided that it has been determined by the Chief of the Children's Bureau that such employment does not interfere with such child's schooling, health, or well-being.

Industry Committees

Section 5 of the Act directs the Administrator as soon as practicable to appoint as industry committee for each industry engaged in commerce or in the production of goods for commerce. Each such committee shall consist of an equal number of persons representing the public, employers, and employees. The chairman of each committee is to be a representative of the public. A quorum for the transaction of business shall consist of two-thirds of all its members, and decisions of the committee must have the approval of at least an absolute majority of all its members. To each committee the administrator is required to submit all such data as he has bearing on the subject of its inquiry concerning hours, wages, or child labor.

Wage Orders

Section 8 of the Statute contains the complete statement of the wage orders to be issued by industry committees. It reads as follows:

"(a) With a view to carrying out the policy of this Act by reaching, as rapidly as is economically feasible without substantially curtailing employment, the objective of a universal minimum wage of 40 cents an hour in each industry engaged in commerce, or in the production of goods for commerce, the Administrator

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shall from time to time convene the industry committee for each industry, and the industry committee shall from time to time recommend the minimum rate or rates of wages to be paid under section 6 by employers engaged in commerce or in the production of goods for commerce in such industry or classifications therein.

"(b) Upon the convening of an industry committee, the Administrator shall refer to it the question of the minimum wage rate or rates to be fixed for such industry. The industry committee shall investigate conditions in the industry and the committee, or any authorized subcommittee thereof, may hear such witnesses and receive such evidence as may be necessary or appropriate to enable the committee to perform its duties and functions under this Act. The committee shall recommend to the Administrator the highest minimum wage rates for the industry which it determines, having due regard to economic and competitive conditions, will not substantially curtail employment in the industry."

"(c) The industry committee for any industry shall recommend such reasonable classifications within any industry as it determines to be necessary for the purpose of fixing for each classification within such industry the highest minimum wage rate (not in excess of 40 cents an hour) which (1) will not substantially curtail employment in such classification and (2) will not give a competitive advantage to any group in the industry, and shall recommend for each classification in the industry the highest minimum wage rate which the committee determines will not substantially curtail employment in such classification. In determining whether such classifications should be made in any industry, in making such classifications, and in determining the minimum wage rates for such classifications, no classification shall be made, and no minimum wage rate shall be fixed, solely on a regional basis, but the industry committee and the Administrator shall consider among other relevant factors the following:

(1) competitive conditions as affected by transportation, living, and production costs;

(2) the wages established for work of like or comparable character by collective labor agreements negotiated between employers and employees by representatives of their own choosing; and

(3) the wages paid for work of like or comparable character by employers who voluntarily maintain minimum-wage standards in the industry.

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No classification shall be made under this section on the basis of age or sex.

"(d) The industry committee shall file with the Administrator a report containing its recommendations with respect to the matters referred to it. Upon the filing of such report, the Administrator, after due notice to interested persons, and giving them an opportunity to be heard, shall by order approve and carry into effect the recommendations contained in such report, if he finds that the recommendations are made in accordance with law, are supported by the evidence adduced at the hearing, and, taking into consideration the same factors as are required to be considered by the industry committee, will carry out the purposes of this section; otherwise he shall disapprove such recommendations. If the Administrator disapproves such recommendations, he shall again refer the matter to such committee, or to another industry committee for such industry (which he may appoint for such purpose), for further consideration and recommendations.

"(e) No order issued under this section with respect to any industry prior to the expiration of seven years from the effective date of section 6 shall remain in effect after such expiration, and no order shall be issued under this section with respect to any industry on or after such expiration, unless the industry committee by a preponderance of the evidence before it recommends, and the Administrator, by a preponderance of the evidence adduced at the hearing finds, that the continued effectiveness or the issuance of the order, as the case may be, is necessary in order to prevent substantial curtailment of employment in the industry.

"(f) Orders issued under this section shall define the industries and classifications therein to which they are to apply, and shall contain such terms and conditions as the Administrator finds necessary to carry out the purposes of such orders, to prevent the circumvention or evasion thereof, and to safeguard the minimum wage rates established therein. No such order shall take effect until after due notice is given of the issuance thereof by publication in the Federal Register and by such other means as the Administrator deems reasonably calculated to give to interested persons general notice of such issuance.

"(g) Due notice of any hearing provided for in this section shall be given by publication in the Federal Register and by such other means as the Administrator deems reasonably calculated to give general notice to interested persons."

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Learners, Apprentices, and Handicapped Workers

For learners, apprentices, messengers employed exclusively in delivering letters and messages, and handicapped workers, the law permits a lower minimum wage than that required for regular workers. This exception is permissible, however, only in those cases for which the Administrator has issued a certificate. A lower wage will be allowed only to such an extent as is necessary to prevent "curtailment of opportunities for employment." Early in November the Administrator declined to extend this exemption to include messengers employed by the great telegraph companies who are employed to deliver parcels as well as letters and messages.

Court Review and Enforcement

Recourse to judicial determination is provided for in the Fair Labor Standards Act of 1938 in any of the following ways:

First, employees may sue directly or by an agent in any court of competent jurisdiction to recover unpaid minimum wages or unpaid overtime compensation. An employer who is held to have violated the wage and hour requirements of the law becomes liable for the payment not only for the unpaid wages but also for an equal amount as damages, plus court costs and reasonable attorneys' fees.

Secondly, either an employer or employee who feels aggrieved by a wage order may have an order by the Administrator reviewed by a United States Circuit Court of Appeals or by the District of Columbia Court of Appeals. In such a case the Court may affirm, modify, or set aside the order; but the Administrator's findings of fact, if supported by substantial evidence, are binding on the Court, whose power to review is limited to questions of law.

In the third place, the Administrator may institute criminal proceedings against any employer who has discharged any employee or discriminated against any employee for filing a complaint under the Act or for testifying in a wage proceeding.

Lastly, the Administrator may apply to a Federal District Court for an injunction to restrain an employer from contemplated violations of the Act.

Effect on Existing Superior Working Conditions

Section 18 of the Act reads:

"No provision of this Act or of any order thereunder shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a minimum wage higher than the minimum

wage established under this Act or a maximum workweek lower than the maximum workweek established under this Act, and no provision of this Act relating to the employment of child labor shall justify noncompliance with any Federal or State law or municipal ordinance establishing a higher standard than the standard established under this Act. No provision of this Act shall justify any employer in reducing a wage paid by him which is in excess of the applicable minimum wage under this Act, or justify any employer in increasing hours of employment maintained by him which are shorter than the maximum hours applicable under this Act."

Suits Planned by Administrator

One of the outstanding problems presented to Elmer F. Andrews, Administrator of the Wage and Hour Law, concerns the legality or illegality of reduction in wages from the rate at which they are now paid to the minimum authorized by the Act. In other words, if an employer is now paying the lowest class of his help 30 cents an hour, may he legally reduce that pay to 25 cents an hour?

The Administrator has said that he is waiting until he can get some "good cases" to test this matter in the courts. He has explained that by a "good case" he means one in which it has been demonstrated that there is no economic necessity upon the employer to reduce the hourly compensation of his employees. In order to determine whether such economic necessity exists Mr. Andrews has stated that he imagined that hearings would be held at which employers would be required to produce their books.

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CURRENT NEW DEAL LEGISLATION

The current year has not been productive of very much new federal legislation, but has rather produced a great deal of legislation by the states patterned upon the so-called "New Deal Acts" of recent years. There have been several momentous decisions concerning the constitutionality of certain federal acts such as the Railway Labor Act, the revised Frazier-Lemke Mortgage Moratorium Act, the National Labor Relations Act and certain others which are discussed at various places in these revision pages.

Among the many state acts which have been passed are a number which have followed the Anti-Price-Discrimination Act (Robinson-Patman Act). During 1937, thirty-two states passed acts relating to unfair sales practices or resale price maintenance. Generally under these acts the dealer is prohibited from selling or advertising sales at less than cost except in honest clearance sales at the end of a season and other practices considered destrictive merchandising are made unlawful. Under some state laws it is now, also, unlawful to sell articles at less than the price at which the manufacturer fixes the retail price by contract with the dealer. This is a radical departure from former laws which held that a contract fixing the price at which an article should be resold was a restriction of free trade.

Efforts have, also, been made to eliminate destructive competition between chain stores and small dealers by taxing theaters and stores on a sliding scale according to the number under one ownership. The competition in allowances made upon used automobiles has been the subject of regulation in some states.

So, also, the Federal Anti-Injunction Act has been followed by many states in acts which strictly limit the power of the courts in issuing injunctions in labor disputes. Usually these laws provide that a court may only issue an injunction in a labor dispute where there have been threats of destruction of property or of riots and the local police have been found unable to cope with the situation.

Several states have extended the provisions of Workingmen's Compensation Laws, giving larger benefits to the injured employees and including occupational diseases within the scope of the acts, and making the administration of the laws more simple.

It should be mentioned here that the Neutrality Act which was passed by Congress in 1936 was extended by a new act passed in May of 1937. Also, the Act providing for reciprocal trade agreements was extended for three years in March, and sixteen such agreements have been made since 1934.

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Supreme Court

During the year 1937 there occurred what will probably be known in history as the most determined effort on the part of a President to control the United States Supreme Court. The criticism which had been directed at the Supreme Court by reason of its declaring unconstitutional many New Deal measures culminated in the introduction in Congress of a bill, the object of which was to insure a young, vigorous judiciary by providing for the appointment of an extra justice for every justice who had served ten years, had reached the age of seventy years, and had failed to resign or retire. The introduction of the bill produced widespread controversy. While the bill was pending, Chief Justice Hughes of the Supreme Court wrote a letter to Senator Wheeler in which he defended the Court, and showed that its dockets were not overcrowded and that it was up to date with its decisions. During the heat of the arguments for and against the proposed changes in the Court, the Supreme Court on March 29th handed down unanimous decisions upholding two of the most momentous of the New Deal acts, namely the Railway Labor Act and the revised Frazier-Lemke Farm Mortgage Moratorium Act, and on the same date by five to four decisions it reversed its stand on the New York Minimum Wage Law, now holding the same to be constitutional and, also, upheld a similar law of the State of Washington. Two weeks later the Supreme Court, on April 12, upheld the National Labor Regulations Act.

The rendering of these several decisions probably caused the defeat of the effort to increase the Supreme Court. Shortly thereafter, on May 18th, the Senate Judiciary Committee reported the bill unfavorably, and on July 22 a motion to recommit the bill to the Judiciary Committee was passed by a vote of the Senate, 70 to 21. The result of this was the practical burial of the bill, and thus ended one of our great constitutional crises.

Regulation of Labor Disputes by States

Although the National Labor Relations Act applies only to concerns engaged in interstate commerce, many states have, during the last year, passed state laws based upon the Wagner Labor Act, and have created state Labor Boards to deal with labor disputes where no question of interstate commerce is involved. Although no disputes have as yet reached the Courts as to whether in any instance the state or federal Labor Board shall take control of a dispute where the employer is principally engaged in local business, but partially in interstate business, some court decision

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will probably be necessary to clarify for the employers in certain cases whether they are subject to the supervision of the federal or state Labor Board.

Sit-Down Strikes

During 1937 there were many labor disputes where the employees took possession of the plants where they had been working, and refused to allow the plant to operate or even to allow the owners of the plant access to the offices until the dispute was settled. This form of strike is generally referred to as "sit-down strike." In many instances, the sit-down strike lasted for weeks, and was the occasion of riot and bloodshed as well as the destruction of valuable property and prolonged business interruption.

A sit-down strike occurred in Philadelphia, Pennsylvania, at the plant of the Apex Hosiery Company, and after some weeks the Hosiery Company started an action in the United States Courts to compel the union members to vacate the plant. The company took the position that it was engaged in interstate commerce and that the sit-down strike amounted to a conspiracy to restrain interstate commerce. This case was the first in which this question had been directly raised and was of far reaching importance. The United States Circuit Court of Appeals (Third Circuit) handed down an opinion on June 21, 1937, in which the Court held: (Apex Hosiery Co. v. Leader).

"The use of unlawful means in conducting a strike involves a conspiracy in restraint of interstate commerce in violation of the Sherman Anti-Trust Act.

"The seizure of property and acts of violence resulting from a sit-down strike are held to constitute unlawful means of conducting a strike.

"Knowledge of the effect of the seizure and retention of property upon the free flow of interstate commerce will imply an intent to obstruct and impede interstate commerce within the meaning of the Sherman Act."

The Court entered an order that the union should immediately vacate the property and restore it to the rightful owner and the union vacated.

An appeal to the United States Supreme Court was taken by the union, but this appeal has not been acted upon as yet.

State Regulation of Hours and Wages

During the session of Congress in 1937, the Administration introduced a bill to regulate wages and hours of labor in United States industry and ban interstate shipment of goods produced

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by child labor. Congress adjourned before this bill was passed, a fact of importance in causing President Roosevelt to call Congress to meet in Special Session, November 15, 1937.

Many of the states did enact laws during 1937 limiting the hours of labor. In most states, separate acts were passed relating to the hours of labor by women and by men. At the present time, there is no uniformity in the number of hours of labor permitted by the various state laws although the tendency is toward a forty four hour week with not more than four hours of labor on the sixth day and one full day of rest in seven. Generally domestic servants and farm employees are exempt from the provisions of the state acts.

Court Decisions on the Right to Regulate Hours of Labor

During 1936 the United States Supreme Court held the New York Minimum Wage Law for women and minors unconstitutional. In 1937, there came before the same Court an appeal which involved the constitutionality of the law of the State of Washington providing for the fixing of minimum wages for women and minors. (*West Coast Hotel Co. v. Parrish, 57 Sup. Ct. Rep. 578.*) In this case, the Court held the Act to be constitutional.

The case arose when Elsie Parrish, employed by a hotel as a chambermaid, brought suit against her employer to recover the difference between the wages paid her and the minimum wages fixed by the law of the State of Washington which was $14.50 for a week of forty-eight hours.

The Court held that this law was a valid exercise of the police power of the state, the Court saying:

"What can be closer to the public interest than the health of women and their protection from unscrupulous and overreaching employers? And if the protection of women is a legitimate end of the exercise of state power, how can it be said that the requirement of the payment of a minimum wage fairly fixed in order to meet the very necessities of existence is not an admissible means to that end? The legislature of the State was clearly entitled to consider the situation of women in employment, the fact that they are in the class receiving the least pay, that their bargaining power is relatively weak, and that they are the ready victims of those who would take advantage of their necessitous circumstances."

Railway Labor Act

The Railway Labor Act, passed in 1926 (amended in 1934), compelled collective bargaining in disputes between railroads and

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their employees, empowered the majority of the employees to select their sole bargaining agency and provided machinery for mediation and adjustment of disputes. The provisions of this act were accepted without legal quibble by most railroads and has helped to make the railroad industry a model of pacific labor relations during the years since its passage.

During 1937, this Act came before the Supreme Court of the United States, and the Court held that the Act was valid and constitutional. (Virginian Railway Co. v. System Federation.)

Federal Income Tax

The President's message to Congress of June 1, 1937, pointed out the wide-spread use of devices within the letter of the revenue laws for the purpose of avoiding taxes. He pointed out instances where yachts, farms, and racing stables had been incorporated and told of corporations formed in foreign countries with capital of American citizens for the obvious purpose of decreasing the amount of tax to be paid on income.

After a few weeks of hearings before the Congressional Joint Committee on Tax Evasion and Avoidance, the Revenue Act of 1937, commonly known as the "loophole closing" bill was passed by Congress and became law.

Under this Act, personal holding companies are defined so as to include corporations which are controlled by not more than five unrelated individuals and which derive most of their income from investments as distinguished from operations. This would apply to the illustrations used by the President of incorporated yachts and racing stables. A tax in addition to the regular corporate taxes is then placed on the undistributed net income of such corporations in order to make it unprofitable to accumulate income in a personal holding company instead of paying it over to the shareholders. Under this Act, the tax on undistributed income amounts to from 65 to 75 percent. A more detailed statement concerning this law is found in the first of the current revision pages dealing with Income Tax.

Securities and Exchange Commission

The public supervision of the security business continued under the Securities and Exchange Commission. The regulations of the Commission became better understood and the authority of the Commission more clearly defined.

The United States Supreme Court upheld the constitutionality of the Securities Exchange Act in 1936 in the case of *Securities*

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and Exchange Commission v. Jones (*289 U.S. 1*), but this decision did not go into the constitutionality of the entire Act.

On October 18, 1937, the Supreme Court refused to review again the constitutionality of this Act. This decision came when the Court denied a petition of three Florida investment firms which were endeavoring to prevent the Commission from examining telegrams received and sent in their business transactions. The decision of the Court in this case was awaited with much interest, since this was the second case in which the Supreme Court had been called upon to rule on the general constitutionality of the Securities Exchange Act and the decision in the previous case (*Securities and Exchange Commission v. Jones*) had been considered to have been upon a narrow basis which did not cover the general constitutionality of this Act. This decision definitely established that the Securities Exchange Act was constitutional.

The Commission does not attempt to prevent speculation or to pass upon the merits of any securities. The object of the Securities Exchange Act, under which the Commission functions being to provide full and fair disclosure to prospective investors of the character of new securities offered and to prevent fraud and misrepresentation in the sale of securities, both old and new. These objects are accomplished by requiring the filing of a statement with the Commission disclosing details necessary to enable the buying public to form an accurate judgment of the value of the security and by requiring the use of a prospectus containing information similar to that filed with the Commission. Nearly all listed securities have been registered with the Commission.

In October of 1937, William O. Douglas became Chairman of the Commission, and he has announced his aims for development of the work of the Commission to include the introduction of more simplified prospectuses, prosecution of pools and attempts to manipulate prices of securities, and further regulation of investment trusts.

During the fall of 1937, there were rapid declines in the price of many securities which resulted in a change in the cash requirements in margin transactions. This change was made by the Federal Exchange Board which reduced the margin requirements for stock purchases from fifty-five per cent to forty per cent, and the Federal Reserve Board for the first time imposed a margin requirement on short selling (fifty per cent).

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THE FIRST SESSION OF THE 74th CONGRESS

In an official letter, dated August 24, and addressed to Vice-President Garner, President of the Senate, President Roosevelt wrote:

> "When a calm and fair view of this Congress is made it will be called an historic session. It has dealt in a spirit of statesmanship with matters of vital interest to the lives of our people. Much has been accomplished for the permanent well-being of the nation as a whole."

Seldom, if ever before, has Congress so wholeheartedly taken strides to control business. The NRA had been shattered by the Schechter Poultry decision. Yet this case taught Congress how to phrase legislation so as to eliminate, as far as possible, constitutional objections. This has become, then a period of trial and error for Congress. Thus, the Guffey-Snyder Coal Bill was passed not because it was felt that it was constitutional, but rather, so that the Court would define the limits of Congressional authority.

Nineteen acts of vital concern to American citizens have been passed during 1935. Some of the more important are discussed within these pages. Total appropriations are estimated at ten billion dollars or about $82 per capita for every inhabitant of this country. The enactments are:

1. Social Security Act to provide for old-age pensions and aid to states for the unemployed, etc.
2. Banking Act of 1935 to reorganize the structure of the Federal Reserve Board to increase its power, and to define operations of the FDIC.
3. Bituminous Coal Conservation Act to establish a little NRA for the coal industry by forcing all soft coal operators into accepting a coal code.
4. Public Utility Act to limit the abuses of large holding companies.
5. Alcohol Control Act to reassert the government's control over the liquor industry after the NRA decision.
6. Baby Bond Act to permit purchases by investors of United States Government bonds as low as $25.00.
7. Motor Carrier Act to regulate prices, hours and condition of labor, etc., for those motor carriers engaged in interstate commerce.
8. Embargo Act to make illegal the sale of munitions to

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belligerents before March 1, 1936, and to prevent American vessels from carrying arms or men to belligerent ships.

9. Gold Clause Act to prevent citizens from suing the Government after January 1, 1936, on account of the devaluation of the dollar.

10. Farm Mortgage Moratorium Act to prevent foreclosures for another three years in bankruptcy proceedings.

11. National Defense Act to increase the size of the Army and Navy by a one billion dollar appropriation.

12. Act amending TVA to redefine its powers and to strengthen its authority to sell surplus power.

13. Act amending AAA to enlarge Governmental farm program to make it more difficult for the processing taxes to be recovered in case the processing tax is invalided by Supreme Court.

14. Wagner Labor Disputes Act to set up a permanent National Relations Board and to maintain collective bargaining in those industries particularly involved in interstate commerce.

15. Revenue Act of 1935 to increase the taxation on estates and gifts and on the income of corporations and wealthy individuals.

16. Emergency Relief Appropriation Act to give employment to 3,500,000 in fulfilling the PWA Construction program.

17. Railroad Retirement Act and Railroad Payroll Tax Act to set up a new pension system to take the place of the one invalided by the Supreme Court.

18. Railroad Reorganization Act to relieve railroad carriers that are unable to meet their maturing obligations.

19. Clark Act to permit voluntary codes in substitution for NRA.

Toward the end of the session Roy W. Howard, publisher, wrote to President Roosevelt telling him of the fears of industry and asserted that a "breathing spell" from such legislation was needed by the country in order to restore confidence and to put industry back on its feet. President Roosevelt, in his reply, stated that the basic program had already attained substantial completion and that the "breathing spell" was here. Skeptics doubt, however, that the "breathing spell" will be for long, and fear further inroads upon business by Congress.

BITUMINOUS COAL CONSERVATION ACT

The Coal Bill was one of the "musts" on President Roosevelt's summer program. It was specifically urged by him, despite

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its apparent unconstitutionality, in order to avert, if possible, a threatening coal strike. Labor leaders had been able to prolong the planned strike but, at the time of the passage of the bill, the strike was scheduled for September 16. The labor upheaval in September was such as to make one feel that the bill hadn't really settled much anyway.

The Act has been called the "little NRA of the coal industry." It applies only to the bituminous coal industry and was set up to alleviate dissatisfaction among the United Mine Workers. Like the NRA, it attempts to fix prices, wages, and hours of employees, set up codes of fair competition, and establish a trade practice code. But it goes much farther than this, and is thus much more drastic than the NRA itself. Making use of the taxing power, Congress asserts that every operator after November 1, 1935, must pay a tax of 15 per cent of the value of the coal at the mouth of the mine. A drawback of 90 per cent is allowed to all those concerns which observe the conditions of the code. As a tax of 15 per cent would completely ruin producers, no operator could disobey the code and continue in business. The Bituminous Coal Commission which is to administer the Act is so powerful that it may revoke any operator's title to the drawback, if it deems that the operator has failed to observe any feature of the code.

The administration of the Act is vested in the above-mentioned Bituminous Coal Commission which is to consist of five members, appointed by the President with the consent of the Senate. The Commission will be subject to the jurisdiction of the Secretary of the Interior. It will possess a consumer's counsel who will be instructed to make independent investigations of the bituminous coal industry in the interests of the public. In addition, a Labor Board of three members is provided for. This Board shall have jurisdiction over all disputes with labor arising under a collective bargaining provision, not unlike Section 7(*a*) of the old NRA code.

"Employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from interference, restraint, or coercion of employers, or their agents in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; and no employee and no one seeking employment shall be required as a condition of employment to join any company union."

Twenty-three coal production areas are to contain a regional or district board which shall administer the details of the Act.

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Labor is permitted one member on each board, the other members being producers or representatives of producers. The labor member "shall be selected by the organization of employees representing the dominant number of employees in the industry of the district in question."

One of the most severe measures of the Act is quite similar to a provision of the Sherman Anti-Trust Law. A code member who deems his interests have been injured by a violation of the code by another code member may bring suit against such code violator in any United States district court and "shall recover threefold damages by him sustained, and the cost of suit, including a reasonable attorney's fee."

The commission may require the operator to keep a uniform system of accounting, costs, wages, operations, sales, profits, etc., and said operator may be fined at the rate of $50 a day for every day he disreagards such regulations of the Commission.

The determination of maximum hours of labor in the bituminous coal industry, however, does not come under the jurisdiction of the Commission. All code members must abide by whatever agreement on that subject is made between producers of two thirds of the annual tonnage output of the country and one half of the mine workers. Minimum wage agreements are to be made in like manner, but may be made on a local, rather than national, basis.

Constitutionality

It is extremely unlikely that the Supreme Court will uphold such a measure. President Roosevelt himself said of the Act: "A decision by the Supreme Court relative to this measure would be helpful as indicating with increasing clarity the constitutional limits within which this government must operate."

Objections to the Act from a constitutional viewpoint are many. Two of the major ones may be briefly mentioned. In the first place, the Congress has relied on the commerce clause. But the Courts have previously held that mining is production, not commerce, and does not necessarily concern the latter at all. The legislators have tried to obviate this major difficulty through a clever use of the taxing power. For, by giving the 90 per cent rebate (on the 15 per cent tax on coal at the mine mouth) only to those concerns which abide by the code, it forces every company into adherence to the code, or into bankruptcy. The Supreme Court has heretofore declared that the taxing power is null and void if used to regulate a power exclusively belonging to the States.

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On August 31, the day after the signing of the bill, proceedings were filed to test the validity of the Act. Counsel for James Carter, President of the Carter Coal Company, pressed the suit, but on September 16, the Federal judge upheld the Government's contention that the suit was immature, inasmuch as the Act had not at that time gone into effect. (The effective date is November 1.) At Louisville, Kentucky, sixteen coal companies had similarly filed suit not long after Mr. Carter. They gained much more success. A stockholder of one of the companies asked for an injunction to compel the court to accept the code since bankruptcy would follow, if it did not. The company filed a motion to dismiss. It is hoped that the issue will reach the Supreme Court as soon as possible.

In the brief filed by the Government, the contention was made that 85 per cent of bituminous coal is used in interstate commerce. The Government claims that such a law is necessary to prevent bankruptcy in the coal industry as well as to prevent "waste of resources, widespread unemployment, and bankruptcy of many coal producers."

MOTOR CARRIER ACT

The Motor Carrier Act, to become effective on October 1 or not later than April 1, 1936, is a partial consummation of the plan of Joseph B. Eastman, Federal Coördinator of Transportation, to make one unified and coördinated transportation system. It is a long sought and greatly needed improvement in Federal interstate control. The over-regulated railroads are expecting much from it for, heretofore, their transportation rivals have been operating with a pretty free hand. For, while the railroads have had to maintain stringent regulations as to maximum and minimum rates, Congress had not interfered whatever with the busses and trucks.

The Act becomes Part II of the Interstate Commerce Act. The Interstate Commerce Commission is given complete jurisdiction in accordance with the terms of the Act to regulate the bus lines and other interstate carriers although its jurisdiction will be not nearly as complete as over the railroads. For example, the I. C. C., to have jurisdiction, must prove that the carrier is really participating in interstate commerce. It can have no control over an intrastate carrier if interstate commerce is only incidentally affected.

Common carriers are required to obtain certificates of public convenience and necessity, but any carrier in bona-fide operation on June 1, 1935, secures these as a right. Contract carriers must

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likewise obtain permits; but they are entitled to them by right, if in operation July 1, 1935. The following types of vehicles or transports are specifically exempt from the terms of the Act, except in regard to maximum hours and qualification of employees and safety devices; taxicabs, school or hotel busses; casual, occasional or reciprocal transportation; transportation wholly within a municipality or contiguous area; newspaper carriers; vehicles used exclusively in carrying livestock, agricultural commodities, or fish, or operated by farm coöperative associations.

The Interstate Commerce Commission is given power, although discretionary, to regulate issuance of a motor company's securities over $500,000 and to prescribe uniform accounting methods. It may fix both maximum and minimum transportation rates, except in the case of truck carriers which are subject to minimum rates only. Rates must be reasonable and justifiable and no discriminations are allowed. Common and contract carriers must carry adequate insurance. The I. C. C. may finally prescribe maximum hours of labor and may establish regulations for property safety appliances and equipment.

THE RAILROADS

The railroads, harassed by unwelcome legislation and injured more and more by the competing bus lines, found 1934 a difficult period. For, while gross earnings of $3,267,044,000 showed a substantial increase over 1933, the net earnings had decreased. Net earnings for 1934 were $830,442,000 as compared with $846,562,000 for 1933. Despite all that their capable managers could do in reducing operating costs, the truth remained that the return to a higher wage scale under NRA proddings had prevented them from making any net income gains whatever. The depression had brought a noticeable decline in freight traffic, from which the railroads make their greatest profits; and low bus fares had harmed beyond repair their passenger profits. To make things blacker, Congress had passed the Railroad Retirement Act which required the carriers to contribute rather large sums to an employee pension plan. The Supreme Court threw a temporary ray of light on this difficulty, however, by declaring such an act invalid in 1935.

An idea of the kind of competition the railroads were facing was indicated in the beginning of 1935 by a report showing that the Government had spent almost $800,000,000 during the Twentieth Century on inland waterways, not including the Great Lakes. Further, it has been computed that taxpayers are now

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spending $2.40 a ton for all freight moving in the upper Mississippi. During this time the railroads have been spending vast sums to meet such Government competition.

The year 1934 was troublesome enough but when the first six months of 1935 were over and business conditions were picking up generally, the railroads were in no better situation than before. Indeed, two of the large railroads, the Chicago and North Western, and the Chicago, Milwaukee, St. Paul and Pacific, faired so badly that they were forced to apply for reorganization under Section 77 of the Corporate Bankruptcy Act, and by November, the New York, New Haven and Hartford had to take similar action. Gross earnings showed little improvement over the $1,627,736,490 taken in during the first half of 1934. Indeed, the $1,632,996,000 grossed from January through June was only 0.32 per cent improvement. Yet at the same time operating expenses were rising heavily because of the restoration of wages to the level of 1929. Thus while gross income rose only $5,259,590 operating costs increased $46,853,000.

During the summer, Congress still continued its railroad legislation. Two acts are believed to be of inestimable value; two others are calculated to restrict the railroads still more. The Motor Carrier Act, framed to stop unfair bus competition, and the Railroad Reorganization Act, framed to aid those railroads on the verge of insolvency, are calculated to relieve them from some of their difficulties. But the other two, the Railroad Retirement Act, and the Railroad Payroll Tax Act, have been passed as a substitution for the Pension Act invalided by the Supreme Court. In effect, it helps labor and increases the railroad's financial burdens.

Railroad Pensions

The Railroad Retirement Act of June 27, 1934, which established a compulsory retirement and pension system for all interstate carriers, was declared unconstitutional by the United States Supreme Court on May 6 of the current year. Justice Roberts asserted that the Act was a grossly unfair burden upon the railroads, that it denied due process of law and was not in effect a regulation of Commerce. The Act was held to be "an attempt for social ends to impose by sheer fiat non-contractual incidents upon the relations of employer and employee, not as a rule of regulation of commerce, but as a means of insuring a particular class of employees against old-age dependency."

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The decision was a severe blow to President Roosevelt's social aims at legislation. But the Congress not long thereafter prepared a similar bill which was hoped to meet the Supreme Court's objections. As a part of the new plan two separate bills were proposed; and Congress this time based its authority on the taxing power rather than the commerce power. These passed Congress and became law upon the President's signature, August 29. The primary bill is known as the Railroad Retirement Act of 1935 while the companionate tax measure is entitled the Railroad Payroll Tax Act. The legislators separated it into two different acts in the hope that they would thereby get around the Supreme Court's objections; but it is greatly doubted that the Acts will be upheld. They are considered at best stop-gap measures.

Railroad Retirement Act of 1935

Any person shall be entitled to an annuity who shall have attained the age of sixty-five by March 1, 1936, who shall have served thirty years and have attained the age of fifty, or who shall have been retired by the carrier because of physical or mental disability after thirty years service. Unless a written agreement to be filed with the Board is made between the carrier and employee, the employee's annuity is reduced one fifteenth for every year of service after he has attained the age of sixty-five. Such a reduction is not applicable to employees serving in an official capacity, or to employees' representatives. If employees over fifty years of age who have served at least thirty years, desire pensions, they will be granted, provided that employees not disabled shall have their pensions reduced one fifteenth for every year they are less than sixty-five.

Annuities are based upon the service of the employee and shall be the sum of the amounts determined by multiplying the number of years' service (not exceeding thirty) by specified percentages of the monthly wages, viz.: 2 per cent of the first $50, 1½ per cent of the next $100, and 1 per cent of the wages over $150 and not higher than $300. The monthly compensation means the average monthly compensation received by the employee except for the period previous to March 1, 1936, wherefor the monthly compensation is the average compensation for the eight consecutive years previous to December 31, 1931. When an employee receiving or entitled to receive an annuity, dies, his widow or nearest dependent is entitled, for a period of one year, to one half of the annuity he would have been entitled to receive. The maximum annuity would be $120 monthly but an employee

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would have to work 30 years with an average salary of $300 monthly to attain such a pension.

An independent Railroad Retirement Board is to be set up. Three members, appointed by the President with the advice and consent of the Senate, shall hold office for a period of five years and shall each receive a salary of $10,000. The said Board shall exercise all duties necessary to administer the Act and shall inform the Secretary of the Treasury of those persons entitled to receive a pension under the terms of the Act.

Railroad Payroll Tax Act

As noted above, the pension plan was spread into two separate Acts to obviate, if possible, constitutional objections. This companionate Act is also to go into effect March 1, 1936. It provides for an income tax on the compensation of railroad employees to be deducted from the wages by the employer. A rate of 3½ per cent will be charged but no tax is to be made on the portion of a monthly wage over $300. The carrier will be taxed a similar amount (3 per cent) as an excise business tax and likewise no tax will be made on compensation over $300 monthly. Employees' representatives are treated separately and must pay an income tax of 7 per cent upon the portion of their salary not in excess of $300. All such taxes are to be collected by the Commissioner of Internal Revenue and are to be added to the United States Treasury as internal revenue receipts. The employees are specifically exempt from payments as otherwise necessitated under the Social Security Act. The analogy of this act with the Social Security Act is very close. Since no mention of pension payments is made in this companionate Act and since the Act merely requires an income tax from railway workers and an excise business tax from the carriers, the Act may be upheld by the Supreme Court. Yet it is hard to believe that the Court will blind its eyes as to the real purpose and intent of the Act. If this Act is upheld, the cost to the carriers, it is estimated, will be about $72,000,000 annually.

Railroad Reorganization Act

A further willingness of Congress to aid the railroads was indicated when Congress this summer passed the Railroad Reorganization Act. The main purpose of Congress was to relieve those railroads which were on the verge of insolvency or were unable to meet their maturing obligations. The Act was approved by the President August 27 and became law as an amendment to the Bankruptcy Act of 1898.

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According to the terms of the Act, any railroad, corporation engaged in interstate commerce may file a petition of reorganization if it finds itself in an insolvent condition. The petition must be filed in the case of most railroads with the Federal court having territorial jurisdiction of the operating office, and a duplicate must be sent to the Interstate Commerce Commission. Five per cent of the creditors of any railroad corporation may file a petition similar to the above in case the railroad has failed to meet its obligations and has not filed such a petition. Under such conditions said corporation must be immediately notified and ten days are given for the filing of an answer. If the railroad denies the petition of the creditors, the judge without a jury, shall decide the issue from the basis of the facts presented. If the petition is approved, the court shall have exclusive jurisdiction of the debtor railroad and its property wherever located. Reorganization may include such actions as altering the rights of creditors, secured or unsecured, and stockholders, and new issues of securities may be exchanged for those held. Merger or consolidation, with other railroad corporations, sale of any railroad property, the extension of maturity dates or the change of interest rates of outstanding obligations may all be a part of a railroad organization plan.

Within thirty days of the filing of the petition the judge shall appoint a trustee or trustees who will assume said responsibilities upon ratification by the Interstate Commerce Commission. In general, the debtor corporation must file a plan for reorganization within six months after the filing of a petition. Similar plans for reorganization may be filed by the trustee or trustees or by creditors representing not less than 10 per cent of any creditor class or by stockholders representing not less than 10 per cent of any one class or by any party at interest which has the consent of the I. C. C. After due notice is given to all creditors and stockholders, the Commission shall hold public hearings at which any interested party may be heard and, it finally shall render a report which may differ in detail from any plan yet submitted.

Section 77 reads as follows: "Upon confirmation by the judge, the provisions of the plan and of the order of confirmation shall, subject to the right of judicial review, be binding upon the debtor, all stockholders thereof, including those who have not, as well as those who have accepted it, and all creditors secured or unsecured, whether or not adversely affected by the plan, and whether or not their claims shall have been filed, and, if filed, whether or not approved, including creditors who have not, as well as those who have, accepted it."

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SENATORIAL ELECTIONS

The Seventy-third Congress of the United States, which convened January 3rd, and adjourned June 28, 1934, enacted important legislation which should be included in the current annual supplement only insofar as such legislation is pertinent to the text in the volumes on Business and Commercial Law.

On June 5, 1934, Congress passed an Act relative to the time for election of United States Senators. This Act provides that at the regular election held in any State next preceding the expiration of the term for which any Senator was elected to represent such State in Congress, at which election a Representative to Congress is regularly by law to be chosen, a United States Senator from said State shall be elected by the people thereof for the term commencing on the third day of January next thereafter. This Act further provided that the Tuesday next after the first Monday in November, in every even numbered year, is established as the day for the election, in each of the States and Territories of the United States, of Representatives and Delegates to the Congress commencing on the third day of January next thereafter. This section does not apply to any State that has not yet changed its day of election, and whose constitution must be amended in order to effect a change in the day of the election of State officers in said State.

NATURALIZATION

On May 24, 1934, Congress passed, and the President approved, the following amendment to our laws on the naturalization of aliens:

"An alien who marries a citizen of the United States after May 24, 1934, or an alien whose husband or wife is naturalized after May 24, 1934, shall not become a citizen of the United States by reason of such marriage or naturalization; but, if eligible to citizenship, he or she may be naturalized upon full and complete compliance with all requirements of the naturalization laws, with the following exceptions:

"(*a*) No declaration of intention shall be required.

"(*b*) In lieu of the five-year period of residence within the United States and the one-year period of residence within the State or Territory where the naturalization court is held, he or she shall have resided continuously in the United States, Hawaii, Alaska, or Puerto Rico for at least three years immediately preceding the filing of the petition."

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SECURITIES EXCHANGE ACT OF 1934

As a result of the Stock Exchange investigation by the United States Senate, many abuses were disclosed which it was found necessary to correct by appropriate legislation. Accordingly, on June 6, 1934, there was enacted "The Securities Exchange Act of 1934." The necessity for Federal regulation of our stock exchanges is clearly pointed out in the language of the Act.

Necessity for Regulation

Transactions in securities as commonly conducted upon securities exchanges and over-the-counter markets are affected with a national public interest which makes it necessary to provide for regulation and control of such transactions and of practices and matters related thereto, including transactions by officers, directors, and principal security holders, to require appropriate reports, and to impose requirements necessary to make such regulation and control reasonably complete and effective, in order to protect interstate commerce, the national credit, the Federal taxing power, to protect and make more effective the national banking system and Federal Reserve System, and to insure the maintenance of fair and honest markets in such transactions.

Such transactions are carried on in large volume by the public generally, and in large part originate outside the States in which the exchanges and over-the-counter markets are located and are effected by means of the mails and instrumentalities of interstate commerce; constitute an important part of the current of interstate commerce; involve in large part the securities of issuers engaged in interstate commerce; involve the use of credit, directly affect the financing of trade, industry, and transportation in interstate commerce; and directly affect and influence the volume of interstate commerce; and affect the national credit.

The prices established and offered in such transactions are generally disseminated and quoted throughout the United States and foreign countries, and constitute a basis for determining and establishing the prices at which securities are bought and sold, the amount of certain taxes owing to the United States and to the several States by owners, buyers, and sellers of securities, and the value of collateral for bank loans.

Frequently the prices of securities on such exchanges and markets are susceptible to manipulation and control, and the dissemination of such prices gives rise to excessive speculation,

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resulting in sudden and unreasonable fluctuations in the prices of securities which cause alternately unreasonable expansion and unreasonable contraction of the volume of credit available for trade, transportation, and industry in interstate commerce, hinder the proper appraisal of the value of securities, and thus prevent a fair calculation of taxes owing to the United States and to the several States by owners, buyers, and sellers of securities, and prevent the fair valuation of collateral for bank loans and obstruct the effective operation of the national banking system and Federal Reserve System.

National emergencies, which produce widespread unemployment and the dislocation of trade, transportation, and industry, and which burden interstate commerce and adversely affect the general welfare are precipitated, intensified, and prolonged by manipulation and sudden and unreasonable fluctuations of security prices and by excessive speculation on such exchanges and markets, and to meet such emergencies the Federal Government is put to such great expense as to burden the national credit.

The Act is designed primarily to accomplish three major objects: (1) to prevent excessive speculation, by limiting the extension of credit in security transactions; (2) to eliminate improper market practices, by regulating security markets, brokers and dealers who transact business in such markets, and devices employed to manipulate such markets; and (3) to make available adequate information relating to securities which are dealt in publicly, and discourage the unfair use of secret information, by regulating such securities and restricting the operations of corporate insiders.

The Federal Reserve Board and the National Credit Securities and Exchange Commission are empowered to administer the Act, the Federal Reserve Board having charge and control of credit in security transactions, and the Commission is given control of securities and security markets. The Act to a large extent leaves the framing of specific regulations to the Federal Reserve Board and the Securities Exchange Commission.

The principles by which the Board and the Commission are to be guided, and the limits within which they may regulate are clearly defined.

It will be convenient to divide our discussion of the Act into four parts, the first three covering the three primary objects mentioned above, and the fourth dealing with means of enforcement.

1. Limitation of credit in security transactions. The Act seeks to control credit which may be used for security trans-

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actions at two vital points: (*a*) extension of credit by brokers or dealers to customers for commitments on margin; and (*b*) loans to brokers and dealers.

(*a*) *Margin Requirements:*

In general, the maximum credit which a broker or dealer may extend to enable a customer to make or carry a commitment on margin is to be determined by rules and regulations of the Federal Reserve Board. For the guidance of the Board, however, a standard is prescribed by the Act for an initial extension of credit. That standard is the higher of the following two alternatives: (1) 55 per cent of the current market price of the security, or (2) 100 per cent of the lowest market price of the security during the preceding thirty-six calendar months (or since July 1, 1933), but not more than 75 per cent of the current market price. The standard is designed to permit more credit when security prices are low, or when the security involved is a relatively stable one, and less when security prices are high, or when the security involved is of a more volatile nature.

As has been observed, the standard is not binding, but may be varied by the Federal Reserve Board. Moreover, it is intended to apply only to credit which is "initially extended," that is, extended on the purchase of a security. The Board is empowered to prescribe a different and presumably lower standard for determining the credit which may be subsequently maintained. Authority is conferred on the Board also to make special rules to regulate the multifarious situations which arise in the maintenance of a margin account, such as additional purchases, substitution of securities, withdrawal of funds, withdrawal of securities, short sales, delayed deliveries, arbitrage transactions, carrying of undermargined accounts, transfers of accounts from one broker to another, etc.

In order to prevent customers from evading margin requirements by borrowing from banks or others instead of from their brokers, the Federal Reserve Board is directed to prescribe rules to cover loans of that character. These rules may impose on all loans made for the purpose of carrying securities limitations similar to those imposed on credit extended to customers directly by brokers and dealers. However, certain types of loans made by lenders other than brokers and dealers, such as loans by banks on securities other than stocks and other "equity securities," are specifically exempted from regulation, even though made for the purpose of carrying securities.

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In order to prevent hasty liquidation of securities and consequent deflation of security prices, the margin requirements of the Act are made inapplicable, until July 1, 1937, to margin accounts and loans existing prior to the enactment of the Act. However, the Federal Reserve Board is authorized to prescribe rules to prevent evasion of the Act through the abuse of this privilege.

(*b*) *Brokers' and Dealers' Borrowings:*

In order to control the flow of credit at its fountainhead, brokers and dealers are not allowed to borrow in the ordinary course of business except from or through a member bank of the Federal Reserve System, from a non-member bank which agrees to be bound by the same laws and rules as member banks, and, to the extent permitted by the Federal Reserve Board, from other brokers or dealers, and from other lenders in emergency cases. In this way the Board's control of credit used for stock-market commitments is made complete.

Other restrictions in the Act on borrowings by brokers are not intended so much to control credit as to protect customers against broker's insolvency. The administration of these other restrictions is therefore vested in the Securities and Exchange Commission. These restrictions forbid brokers to permit the aggregate indebtedness incurred in the ordinary course of their business to exceed twenty times their capital, exclusive of fixed assets and exchange membership, or a smaller ratio if prescribed by the Commission; to commingle securities of a customer in a common loan with securities of others, or to lend securities of a customer, without the written consent of the customer concerned, except as permitted by the Commission's rules; and, even with the consent of the customer (except as permitted by the Commission's rules) to commingle a customer's securities with securities of the broker himself or of any person except other bona fide customers, or to permit the securities of customers to be hypothecated in the aggregate for a larger amount than is owed by the customers on the securities.

2. Regulation of security markets.

(*a*) *Exchanges and Over-the-Counter Markets:*

In order to make effective the control of the Securities and Exchange Commission over security markets, an exchange on which transactions are conducted, or transactions on which are reported, through the use of the mails or of interstate commerce, is required to be registered as a national securities exchange.

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In order to become registered the exchange must file with the Commission a registration statement, which must contain certain specified information, and an agreement by the exchange to comply with the Act and so far as is within its power to enforce compliance by its members. Small exchanges where the volume of business is limited may apply to the Commission for exemption from registration.

Over-the-counter markets in which use is made of the mails or of interstate commerce also are subjected to control by the Commission. No rules are prescribed by the Act for markets of that character, except the guiding principle that investors in such markets are to be afforded "protection comparable to that" provided in the case of national securities exchanges. The regulation of over-the-counter markets is left entirely to the Commission.

(*b*) *Brokers and Dealers:*

Brokers who trade or deal in securities for their own account as well as for the account of customers have been subjected to special regulation, in order that their possible conflicting interests may not injure the interests of their customers or of the investing public. These regulatory provisions cover the cases of (1) exchange members who trade for their own account, (2) odd lot dealers, (3) specialists, and (4) brokers who also are dealers. The Securities and Exchange Commission is authorized to prescribe rules and regulations limiting trading by such brokers for their own account, and otherwise controlling their activities.

A broker who is also a dealer is subject to two specific statutory requirements: (1) He must notify his customers at or before the completion of a transaction of the particular capacity in which he is acting, that is, whether as dealer for his own account, as broker for the customer, or as broker for some other person; and (2) he may not carry on margin a security which was part of a new issue in the distribution of which he participated within the preceding six months.

(*c*) *Manipulative Practices:*

A number of well-recognized market practices have from time to time been used to influence the prices of securities in a manner not necessarily bearing any substantial relation to the true value of the security. Some of these practices which serve no useful economic function have been wholly banned by the Act. Others, which frequently have legitimate uses but which, nevertheless, have also been used for manipulative purposes, have not been prohibited entirely, but have been subjected to regulation by the Securities and Exchange Commission.

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Practices entirely prohibited are: (1) wash sales, if effected for the purpose of creating a false or misleading appearance of the market; (2) matched orders, if entered for a like purpose; (3) series of transactions in which the price of a security raised or depressed, or in which the appearance of active trading is created, for the purpose of inducing purchases and sales by others; (4) circulation by a broker, dealer, seller or buyer, or by a person who receives a consideration from a broker, dealer, seller or buyer of information concerning market operations conducted for a rise or a decline, even if the information is true; (5) material false and misleading statements by brokers, dealers, sellers, and buyers.

Practices which have not been prohibited but which have been subjected to regulation by the Commission are: (1) pegging, fixing, or stabilizing prices; (2) puts, calls, straddles and other options, transactions in securities by or for holders of such options, and guarantees of such options; (3) short sales; (4) stop loss orders; (5) other manipulative or deceptive devices and contrivances.

3. Regulations relating to securities publicly traded in:

(*a*) *Corporate Reports:*

In order to afford reasonably adequate information to investors and security holders, all securities traded in on exchanges (unless exempted) must be registered. The application for registration must be filed with the exchange and with the Securities and Exchange Commission by the "issuer," that is, the corporation whose security is involved, and must embody specified information. To relieve congestion at the outset, the Commission is authorized to grant provisional registration until July 1, 1935, without the filing of an application, to any security listed on an exchange at the time the exchange is registered.

In addition to the information given in the original application for registration, the issuer of every registered security is required to keep the information up to date, and to file annual and quarterly reports. Special provision is made for the protection of trade secrets and processes.

Proxies are subjected to regulation by the Commission, in order that stockholders who are asked to sign them may be fully informed of the purposes for which they are to be used.

(*b*) *Officers, Directors, and Large Stockholders:*

To prevent the unfair use by insiders of confidential information, every officer and director, and every stockholder owning

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10 per cent of any class of stock of a corporation whose securities are registered is required to file with the exchange and with the Commission a statement of his stock holdings, and to report all changes in his holdings monthly. In case any such director, officer, or stockholder makes a profit by selling any stock of his corporation within six months of the time he buys it, or by buying it back within six months of the time he sells it, he must turn over the profit to the corporation. A suit to recover the profit may be brought by the corporation itself, or, if the corporation fails to bring it, by any stockholder for the corporation's benefit.

Directors, officers, and 10 per cent stockholders are forbidden to sell short the stock of their corporation, or to sell it short "against the box," or to sell it on credit.

4. Enforcement of the act.

(*a*) *Criminal Penalties:*

A wilful violation of the Act, or a wilful material false or misleading statement in a document required to be filed under the Act, is a penal offense.

(*b*) *Civil Liabilities:*

For a wilful violation of the provisions of the Act relating to manipulative market practices, civil liability is imposed in favor of anyone who buys or sells a security at a price which is affected by the violation. The imposition of this liability potentially constitutes every investor and trader an agency for the enforcement of the manipulative provisions of the Act. A person bringing a civil suit for a prohibited act need not prove that he placed any reliance on the act which is the basis of the suit, nor, in fact, that there was any relationship between him and the person against whom his suit is directed.

For making a false or misleading statement in a document filed under the Act (unless made in good faith and without knowledge that the statement was false or misleading), civil liability is imposed in favor of anyone who buys or sells a security at a price which is affected by the statement, if the person suing relied on the statement. This liability, it will be observed, is more limited than that for an unlawful manipulative act, because it arises only where reliance is established.

Persons who are subject to the possibility of civil liability under the Act are afforded a certain degree of protection against strike suits by a short statute of limitations (one year after discovery of the facts, and in no event more than three years), and by provisions for a bond for costs and imposition of attorneys'

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fees against the unsuccessful party. Exclusive jurisdiction of suits is vested in the Federal courts.

Further civil penalties are imposed by the invalidation of contracts of persons who violate the Act. Any contract made in violation of the Act, unless the violation is innocent, is void so far as concerns the rights of the party who is guilty of the violation. If the making or performance of the contract involves a violation of the Act by only one of the parties, the other party may at his option enforce the contract or repudiate it.

(c) *Action by Securities and Exchange Commission:*

The Securities and Exchange Commission is empowered to take various kinds of action for the enforcement of the Act.

It may withdraw or suspend the registration of an exchange, expel or suspend an exchange member or officer, or deny, suspend, or withdraw registration of a security. It may summarily suspend trading in a security for ten days, or, with the approval of the President, suspend all trading on an exchange for not more than ninety days.

The Commission may also request an exchange to alter its rules with respect to a large number of matters specified in the Act. If the exchange refuses, the Commission may itself, after a hearing, compel the desired alteration.

The Commission may require exchanges, brokers, and dealers to keep such books and records as it may require, and may examine these books and records whenever reasonably necessary, and may also require exchanges, brokers, and dealers to make reports when requested. It may make investigations to determine whether the Act has been or is about to be violated, or to assist it in the enforcement of the Act, or in the formulation of rules and regulations, or in the recommendation of further legislation. In connection with any investigation it may subpoena witnesses and documents, and may hold hearings which may but need not be public. It may institute actions to prevent a violation of the Act by injunction, or to compel compliance with the Act by writ of mandamus.

Inapplicability of Act in Certain Instances:

Certain securities are exempted from the operation of the Act. These, which are referred to as "exempted securities," include those of Federal, State, and Municipal Governments and certain of their agencies and instrumentalities, and other securities which the Securities and Exchange Commission may exempt.

Situations where use is not made of the facilities of a registered exchange or of the mails or of interstate transportation or

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communication in general are not within the scope of the Act. Although for the sake of simplicity the Act has been summarized as if it applied to all situations, it is in fact inapplicable where one of these spheres of Federal control is not directly or indirectly involved.

THE NATIONAL INDUSTRIAL RECOVERY ACT

In the 1933 Supplement we reviewed the National Industrial Recovery Act. On June 19, 1934, certain amendments to the original Act were passed by Congress, which we believe will be of general interest. In order to further effectuate the policy of the NRA, Congress authorized the President to establish a board or boards directed to investigate issues, facts, practices, or activities of employers or employees in any controversies arising under the original Act or which are burdening or obstructing the free flow of interstate commerce.

Any board so established is empowered by the amendment, when it shall appear in the public interest, to order and conduct an election by a secret ballot of any of the employees of any employer, to determine by what person or persons or organization they desire to be represented in order to insure the right of employees to organize and to select their representatives for the purpose of collective bargaining.

For the purpose of such election such a board shall have the authority to order the production of such pertinent documents or the appearance of such witnesses to give testimony under oath, as it may deem necessary to carry out the provisions of the law. Any order issued by such a board may, upon application of such board or upon petition of the person or persons to whom such order is directed, be enforced or reviewed, as the case may be, in the same manner, so far as applicable, as is provided in the case of an order of the Federal Trade Commission. Any such board, with the approval of the President, may prescribe such rules and regulations as it deems necessary to assure freedom from coercion in respect to all elections.

The amendment under consideration simply provides that nothing therein shall prevent or impede or diminish in any way the right of employees to strike or engage in other concerted activities. The Act shall cease to be in effect, and any board or boards established hereunder shall cease to exist, on June 16, 1935, or sooner if the President by proclamation or the Congress shall by joint resolution declare that the emergency has ended which justified the enactment of the law.

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COMMERCIAL LAW

In Volume 10, under the subject of CONSTITUTIONAL LAW, we observed that the Federal Constitution vested in Congress the power not only to provide for the common defense but to promote the general welfare of the United States. Acting under this constitutional power, the 73rd Congress enacted this year what is known as the "National Industrial Recovery Act," which is by far the most important piece of legislation which it passed, affecting as it does every branch of business and industry in the United States.

The Act is divided into three titles, only the first of which we need discuss.

Title I of the Act provides a program of industrial recovery through removal of obstructions to the free flow of interstate commerce, promotion of coöperative action among trade groups and between labor and management, elimination of unfair competition, and relief of unemployment, all under adequate governmental sanction and supervision in order to protect the public interests.

The Act provides for codes and agreements for the regulation of various industries, with enforcement and coördinating powers vested in the President. The following methods are provided for carrying out the policies of the Act: (1) voluntary codes of fair competition; (2) mandatory codes; (3) trade agreements; (4) labor agreements; (5) limited labor codes; and (6) licensing.

Despite the centralized power, emphasis is placed upon voluntary action. To make competition sane rather than blind and destructive, the Act allows any trade or industrial association or group to prepare and submit to the President for approval a voluntary code of fair competition. Such a code of fair competition should set forth the best judgment of those engaged in the particular trade or industry as to the competitive conditions within the industry, specifically (1) the standards of fair competition; (2) the trade practices which should be banned as unfair, oppressive, and designed to give advantage to the employer with the lowest standards; (3) the methods which should be employed to rehabilitate the industry, increase its capacity to give employment, and raise the living standards of those who labor in it. These methods may include devices such as exchange of information, coöperative marketing, simplification of style, standardization of products, and many other features. When a voluntary code is approved by the President, it becomes effective

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and binding upon the entire trade or industry and any action complying with it is exempted from the provisions of the anti-trust laws.

In the preparation of voluntary codes each trade or industry is afforded opportunity to adjust itself to the spirit of the law. The President is authorized to approve such a code only if he finds the following conditions:

(1) That the association or group admits equitably to membership all who are engaged in the same trade or industry.

(2) That the association or group is truly representative of the trade or industry for which it speaks.

(3) That the code presented will not promote a monopoly.

(4) That the code will not oppress or discriminate against small enterprises. The law as enacted also provides that such code or codes shall not permit monopolies or monopolistic practices.

(5) That employees will have the right to organize and bargain collectively, through representatives of their own choosing.

(6) That no employee will be required as a condition of employment to sign an anti-union contract.

(7) That employers will comply with the maximum hours of labor and minimum wage of pay and standards for other working conditions approved by the President.

(8) That the code will tend to effectuate the policy of this title.

When the President has approved a voluntary code, if anyone engaged in interstate commerce or in business affecting interstate commerce violates any of the provisions of such code, such a violation would constitute an act of unfair competition.

Several methods are provided for the enforcement of a code. Proceedings may be taken to prevent unfair competition under the Federal Trade Commission Act. A violation of any of the code provisions constitutes a misdemeanor punishable by a fine of $500 for each offense and each day such violation continues shall be deemed a separate offense. Violations of code provisions may be prevented by an injunction proceeding taken in the Federal courts. A code may also be made effective through the licensing provisions contained in the Act. If codes, agreements, or licenses prove faulty, the power is reserved to the President to cancel or modify any order, approval, license, rule or regulation.

On his own motion, or upon complaint that abuses exist in

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any trade or industry or subdivision thereof, the President is authorized to prepare and approve, after holding hearings, a mandatory code of fair competition for such trade or industry. Such a code has the same effect as a voluntary code of fair competition and is subject to the same provisions and penalties. If any trade or industry cannot or will not coöperate in the preparation of a voluntary code, the President may prescribe a mandatory code.

Voluntary agreements between and among individuals, labor, trade and industrial organizations, which will aid in effectuating the policy of the law and which will be consistent with the requirements of a code of fair competition, may be made or approved by the President. A code of fair competition for an entire trade or industry must be made by those truly representative of the trade or industry and these voluntary agreements can be entered into by parties in an industry or in more than one industry. The code binds all persons engaged in a trade or industry, but an agreement binds only those entering into it. The provisions for codes and agreements supplement each other and provide a thoroughly flexible machinery of industrial operations.

The President is given authority to license business enterprises whenever he finds it necessary in order to make effective a code of fair competition or an agreement, or otherwise to effectuate the policy of the Act. This is a vigorous emergency power which will not be exercised except where necessary to prevent unfair competition, to remove obstructions to interstate commerce, and otherwise to carry out the purposes of the Act. Licenses are subject to revocation after due notice and opportunity for hearing in the event of violations, and a violation of a condition of a license or operating without a license is made an offense punishable by a fine or imprisonment.

Employers and employees are given every opportunity to establish, by mutual agreements, standards of maximum hours, minimum rates of pay, and other conditions of employment necessary to carry out the policy of the Recovery Act. Such agreements, when approved by the President, have the same effect as a code of fair competition. If no such mutual agreement has been approved by the President he may, after due investigation, prescribe a limited code of fair competition, fixing the maximum hours, minimum wages, and other conditions of employment.

On March 3, 1933, an Act of Congress was approved, amending the National Bankruptcy Law to meet the extraordinary condi-

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tions incidental to the recent depression. Congress, by this enactment, added an entirely new chapter to the Bankruptcy Law of July 1, 1898, with the amendments thereto.

Under the last amendment, any person may file a petition, or in an involuntary proceeding before adjudication, an answer, accompanied in either case by his schedules, stating that he is insolvent or unable to meet his debts as they mature, and that he desires to effect a composition or an extension of time to pay his debts. The term "debt" for the purpose of an extension proposal shall include all claims of whatever character against the debtor or his property, including a claim for future rent, whether or not such claims would otherwise constitute provable claims under the Bankruptcy Law. Upon the filing of such a petition or answer the judge shall enter an order either approving it as properly filed, if satisfied that such petition or answer has been filed in good faith, or dismissing it. If such petition or answer is approved, an order of adjudication shall not be entered, and in staying the action for adjudication in an involuntary proceeding, the court shall make such stay conditional upon such terms for the protection and indemnity against loss by the estate as may be proper, and that in any other proceeding the court may, as the creditors at the first meeting may direct, impose similar terms as a condition of delaying the appointment of a trustee and the liquidation of the estate.

Any person by or against whom a petition is filed shall be referred to in the proceeding as "debtor." The term "creditor" shall include for the purpose of an extension proposal all holders of claims of whatever character against the debtor or his property, including a claim for future rent, whether or not such claims would otherwise constitute provable claims in bankruptcy. A claim for future rent constitutes a provable debt.

After the filing of a petition or answer as above provided, the court may, upon reasonable notice to creditors and attorneys of record, appoint a custodian or receiver, who shall inventory the debtor's estate and exercise such supervision and control over the conduct of the debtor's business as the creditors at any meeting or the court shall direct.

The custodian or receiver, or, if none has been appointed, the court shall promptly call the first meeting of creditors, stating in the notice that the debtor proposes to offer terms of composition or extension, and inclosing with the notice a summary of the inventory, a brief statement of the debtor's indebtedness

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as shown by the schedules, and a list of the names and addresses of the secured creditors and the fifteen largest unsecured creditors, with the amounts owing to each. Any creditor may appear at or before the first meeting and controvert the facts alleged in the petition. In such case the court shall determine as soon as may be the issues presented, without the intervention of a jury, and unless the material allegations are sustained by the proofs shall dismiss the petition.

At the first meeting the debtor may be examined and the creditors may nominate a trustee, who shall thereafter be appointed by the court, in case it becomes necessary to liquidate the estate. The court shall, after hearing the parties in interest, fix a reasonable time within which application for confirmation shall be made. The court may later extend such time for cause shown, and may require, as a condition of such extension, additional terms for the protection of and indemnity against loss by the estate.

An application for the confirmation of a composition or extension proposal may be filed in the court of bankruptcy after, but not before, it has been accepted in writing by a majority in number of all creditors whose claims if unsecured have been allowed, or if secured are proposed to be affected by an extension proposal, which number must represent a majority in amount of such claims; and the money or security necessary to pay all debts which have priority unless waived and the cost of the proceedings, and in case of a composition the consideration to be paid by the debtor to his creditors, have been deposited in such place as shall be designated by and subject to the order of the court.

A date and place shall be fixed, with reference to the convenience of the parties in interest, for a hearing upon each application for the confirmation of the composition or extension proposal, and such objections as may be made to its confirmation.

The court shall confirm the proposal if satisfied that it includes an equitable and feasible method of liquidation for secured creditors whose claims are affected and of financial rehabilitation for the debtor. The court must be further satisfied that the proposal is for the best interests of all creditors and that the debtor has not been guilty of any of the acts, or failed to perform any of the duties, which would be a ground for denying his discharge. The Act is designed to aid honest and worthy debtors and the offer of composition or proposal for an extension

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of credit must be made in absolute good faith. In considering an application for an extension the court shall require proof from each creditor filing a claim that such claim is free from usury.

The terms of an extension proposal may extend the time of payment of either or both unsecured debts and secured debts the security for which is in the possession of the debtor or of the custodian or receiver, and may provide for priority of payments to be made during the period of extension as between secured and unsecured creditors. It may also include specific undertakings by the debtor during the period of the extension, including provisions for payments on account, and may provide for supervisory or other control over the debtor's business or affairs during such period by a creditors' committee, and for the termination of such period under specified conditions.

An extension proposal upon its confirmation shall be binding upon the debtor and his unsecured and secured creditors affected thereby, provided such extension or composition shall not reduce the amount of or impair the lien of any secured creditor, but shall affect only the time and method of its liquidation. Upon the confirmation of an extension proposal, the court may dismiss the proceeding or retain jurisdiction of the debtor and his property during the period of extension in order to protect and preserve the estate and enforce the terms of the extension proposal. In any distribution, assignment, composition, or settlement, debts shall have priority of payment as provided in the general bankruptcy law.

If the debtor shall fail to comply with any of the terms required of him for the protection of and indemnity against loss by the estate, or if the debtor has failed to make the required deposit in case of a composition, or his proposal has not been accepted by the creditors and confirmation has been denied, or if without sufficient reason the debtor defaults in any payment required to be made under the terms of an extension proposal, when the court has retained jurisdiction of the debtor or his property, the court may appoint the trustee nominated by the creditors at the first meeting, and if the creditors shall have failed to so nominate, may appoint any other qualified person as trustee to liquidate the estate. The court shall adjudge the debtor a bankrupt if satisfied that he commenced or prolonged the proceeding for the purpose of delaying creditors and avoiding an adjudication in bankruptcy, or if the confirmation of his proposal has been denied. No order of liquidation or adjudication shall

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be entered in any proceeding instituted by or against a wage earner or a person engaged chiefly in farming or the tillage of the soil unless the wage earner or farmer consents. The filing of a debtor's petition or answer seeking relief shall subject the debtor and his property, wherever located, to the exclusive jurisdiction of the court.

The court may on such notice and terms as it deems fair and equitable enjoin secured creditors who may be affected by the extension proposal from proceeding in any court for the enforcement of their claims until the extension has been confirmed or denied by the court.

Agricultural Compositions and Extensions

Courts of bankruptcy are authorized, upon petition of at least fifteen farmers within any county, who certify that they intend to file petitions, to appoint for such county one or more referees to be known as conciliation commissioners, or to designate for service in such county a conciliation commissioner previously appointed for an adjacent county. In case more than one conciliation commissioner is appointed for a county, each commissioner shall act separately and shall have such territorial jurisdiction within the county as the court shall specify. No individual shall be eligible for appointment as a conciliation commissioner unless he is eligible for appointment as a referee and in addition is a resident of the county, familiar with agricultural conditions therein and not engaged in the farm mortgage business of financing farmers or transactions in agricultural commodities or the business of marketing or dealing in agricultural commodities or of furnishing agricultural supplies.

The cost of filing such a petition by a farmer shall be $10.

If the creditors at any time desire supervision over the farming operations of a farmer, the cost of such supervision shall be borne by such creditors or by the farmer, as may be agreed upon by them, but in no instance shall the farmer be required to pay more than one-half of the cost of such supervision. A conciliation commissioner who supervises farming operations may receive such compensation as may be agreed upon by the parties.

At any time within five years from March 3, 1933, a petition may be filed by any farmer, stating that he is insolvent or unable to meet his debts as they mature, and that it is desirable to effect a composition or an extension of time to pay his debts. The

petition or answer of the farmer shall be accompanied by his schedules. The petition and answer shall be filed with the court, but shall, on request of the farmer or creditor, be received by the conciliation commissioner for the county in which the farmer resides and promptly transmitted by him to the clerk of the court for filing. After the filing of such petition or answer by the farmer he shall file an inventory of his estate within such time and in such form as may be provided.

The conciliation commissioner shall promptly call the first meeting of creditors, stating in the notice that the farmer proposes to offer terms of composition or extension, and inclosing with the notice a summary of the inventory, a brief statement of the farmer's indebtedness, as shown by the schedules, and a list of the names and addresses of the secured creditors and unsecured creditors, with the amounts owing to each. At the first meeting of the creditors the farmer may be examined, and the creditors may appoint a committee to submit to the conciliation commissioner a supplementary inventory of the farmer's estate. The conciliation commissioner shall, after hearing the parties in interest, fix a reasonable time within which application for confirmation shall be made, and may later extend such time for cause shown.

There shall be prepared by, or under the supervision of the conciliation commissioner a final inventory of the farmer's estate, and in the preparation of such inventory the commissioner shall give due consideration to the inventory filed by the farmer and to any supplementary inventory filed by a committee of the creditors.

An application for the confirmation of a composition or extension proposal may be filed in the court of bankruptcy after but not before it has been accepted in writing by a majority in number of all creditors whose claims have been allowed, including secured creditors whose claims are affected, which number shall represent a majority in amount of such claims, and the money or security necessary to pay all debts which have priority, unless waived, and in case of a composition, the consideration to be paid by the farmer to his creditors has been deposited in such place as shall be designated by and subject to the order of the court.

A convenient date and place shall be fixed for a hearing upon each application for the confirmation of the composition or extension proposal and upon such objections as may be made to its confirmation.

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The court shall confirm the proposal if satisfied that it includes an equitable and feasible method of liquidation for secured creditors and of financial rehabilitation for the farmer, and that it is for the best interests of all creditors, and that the offer and its acceptance have been made in good faith.

The terms of a composition or extension proposal may extend the time of payment of either secured or unsecured debts, or both, and may provide for priority of payments to be made during the period of extension as between secured and unsecured creditors. It may also include specific undertakings performed by the farmer during the period of the extension, including provisions for payments on account, and may provide for supervisory or other control by the conciliation commissioner over the farmer's affairs during such period, and for the termination of such period of supervision or control under specified conditions.

Upon its confirmation a composition or extension proposal shall be binding upon the farmer and his secured and unsecured creditors, provided that such composition or extension shall not reduce the amount of nor impair the lien of any secured creditor but shall affect only the time and method of its liquidation.

Upon the confirmation of a composition the consideration shall be distributed under the supervision of the conciliation commissioner as the court shall direct, and the case dismissed. Debts having priority of payment under the general bankruptcy law shall have the same priority under the amendment we are now discussing. Upon the confirmation of an extension proposal the court may dismiss the proceeding or retain jurisdiction of the farmer and his property during the period of the extension in order to protect and preserve the estate and enforce through the conciliation commissioner the terms of the extension proposal.

Except upon petition made to and granted by the judge after hearing and report by the conciliation commissioner, the following proceedings shall not be instituted, or if instituted at any time prior to the filing of a petition, shall not be maintained in any court against the farmer or his property, at any time after the filing of the petition, and prior to the confirmation or other disposition of the composition or extension proposal by the court:

(1) Proceedings for any demand, debt, or account, including any money demand;

(2) Proceedings for foreclosure of a mortgage on land, or for cancellation, rescission, or specific performance of an agreement for sale of land or for recovery of possession of land;

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(3) Proceedings to acquire title to land by virtue of any tax sale;

(4) Proceedings by way of execution, attachment, or garnishment;

(5) Proceedings to sell land under or in satisfaction of any judgment or mechanic's lien; and

(6) Seizure, distress, sale, or other proceedings under an execution or under any lease, lien, chattel mortgage, conditional sale agreement, crop payment agreement, or mortgage.

The prohibitions above set forth shall not apply to proceedings for the collection of taxes, interest or penalties with respect thereto, nor to proceedings affecting solely property other than that used in farming operations or comprising the home or household effects of the farmer or his family.

A conciliation commissioner shall upon request assist any farmer in preparing and filing his petition and in all proceedings taken thereafter, as this law in aid of farmers requires no farmer to be represented by an attorney.

The term "farmer" means any individual who is personally bona fide engaged primarily in farming operations or the principal part of whose income is derived from farming operations, and includes the personal representative of a deceased farmer. Such a farmer shall be deemed a resident of any county in which his farming operations occur.

In Volume 10 (pages 726 to 758) we discussed the subject of Banks and Banking, and in particular the Federal Reserve Bank Act. The epidemic of bank failures throughout the country, which culminated in the bank holiday in March of this year, necessitated the enactment of legislation to remedy the deficiencies in our banking law. Congress accordingly passed a banking act, which was approved June 16, 1933. The purpose of this Act, as stated in its title, is to provide for the safer and more effective use of the assets of banks, to regulate interbank control, and to prevent the undue diversion of funds in speculative operations.

The Act, of course, is very technical, and we will invite attention only to such salient features as would be of interest to the average business man.

Under the Banking Act of 1933 the Federal Reserve Board is authorized to suspend the use of the credit facilities of the Federal Reserve System of any bank member for trading in speculative securities, real estate or commodities. This provision

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is specifically intended to restrict bank loans to commercial uses. It will readily be perceived that with such power vested in the Federal Reserve Board artificial stock market booms, real estate speculation and manipulation of commodity markets can be prevented or controlled.

Under this new Act, Morris Plan banks and mutual savings banks are eligible to membership in the Federal Reserve System. A mutual savings bank, to be eligible to membership in the Federal Reserve System, must deposit from its surplus and undivided profits account with the Federal Reserve 6/10 of 1 per cent of the total deposit liabilities, to be applied in the purchase of Federal Reserve bank stock.

If stock subscriptions are prohibited by state law, a deposit of like amount will be accepted. Interest will be paid on such deposit at same rate as dividend paid on stock.

If the next Legislature, in a state in which a mutual savings bank is located, which desires to become a member of the Federal Reserve System, does not authorize a stock subscription, the membership will be canceled. If it does authorize a stock subscription, said subscription must be made within six months after passage of the law, or the applicant will become ineligible for membership.

To be eligible, the savings bank must have surplus and undivided profits not less than the amount of capital required for the organization of a national bank.

State bank members of the Federal Reserve System are prohibited from owning security affiliates, such members being given one year from June 16, 1933, to divorce themselves from any security affiliates.

The Federal Reserve Board is given regulatory powers over speculative loans in each Federal Reserve District. Upon the affirmative vote of not less than six of its members, the Federal Reserve Board may prescribe the percentage of bank members' capital and surplus which may be represented by loans secured by stock or bond collateral, but no such loan shall exceed 10 per cent of the capital and surplus. The Federal Reserve Board may direct that any member must not further increase its loans so secured up to one year, under the penalty of suspension of its rediscount privileges.

Said banks who are members of the Federal Reserve System are permitted to have branches the same as national bank members.

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Federal Deposit Insurance Corporation

Of particular interest to every bank depositor throughout the United States is that portion of the Banking Act of 1933 which provides for the creation of a Federal Deposit Insurance Corporation. The law requires this Corporation to purchase, hold and liquidate the assets of national banks which have been closed by action of the Comptroller of the Currency, or by vote of their directors, and the assets of state member banks which have been closed by action of the state authorities, or by vote of their directors. Temporary insurance deposits is provided for between January 1, 1934, and June 30, 1934, to the maximum amount of $2,500. Beginning July 1, 1934, time and demand deposits of all member banks shall be insured to the extent of 100 per cent of any deposit not exceeding $10,000; 75 per cent of any deposit above $10,000, but not over $50,000; 50 per cent of any deposit over $50,000. After July 1, 1936, all banks must be members of the Federal Reserve System in order to participate in deposit insurance. Before this date they are eligible, upon proper certification as to their soundness.

Interest

Payment of interest on demand deposits is prohibited by the new law, except on existing certificates of deposit, which must not be renewed to bear interest. This provision does not apply to deposits payable only at a foreign office of a member bank, or to deposits by a mutual savings bank or to public deposits if interest is required by any state law.

Postal savings are repayable at any time on demand, but no interest may be paid except interest accruing before the passage of the Banking Act we are reviewing, unless sixty days' withdrawal notice has been given.

No executive officer of a bank which is a member of the Federal Reserve System is permitted to borrow money from his own bank, but existing loans may be extended for a period of not more than two years after the passage of the Banking Act of 1933.

A bank that is a member of the Federal Reserve System may engage in the business of dealing in investment securities only to the extent of buying and selling them, without recourse, and solely upon the order and for the account of customers, and not for its own account. Such a bank is prohibited from underwriting any issue of securities. The restrictions relating to member banks dealing in securities does not go into effect until June 16, 1934.

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INCOME TAX LAW FOR 1932

No attempt can be made in these revisions to give the complete text of the Federal Revenue Act of 1932. Ten pages of the most important provisions are here presented:

RATES OF TAX.

NORMAL TAX ON INDIVIDUALS.

SEC. 11. There shall be levied, collected, and paid for each taxable year upon the net income of every individual a normal tax equal to the sum of the following:

(*a*) 4 per centum of the first $4,000 of the amount of the net income in excess of the credits against net income provided in section 25; and

(*b*) 8 per centum of the remainder of such excess amount.

SURTAX ON INDIVIDUALS.

SEC. 12. **Rates of Surtax.**—There shall be levied, collected, and paid for each taxable year upon the net income of every individual a surtax as follows:

Upon a net income of $6,000 there shall be no surtax; upon net incomes in excess of $6,000 and not in excess of $10,000, 1 per centum of such excess.

$40 upon net incomes of $10,000; and upon net incomes in excess of $10,000 and not in excess of $12,000, 2 per centum in addition of such excess.

$80 upon net incomes of $12,000; and upon net incomes in excess of $12,000 and not in excess of $14,000, 3 per centum in addition of such excess.

$140 upon net incomes of $14,000; and upon net incomes in excess of $14,000 and not in excess of $16,000, 4 per centum in addition of such excess.

$220 upon net incomes of $16,000; and upon net incomes in excess of $16,000 and not in excess of $18,000, 5 per centum in addition of such excess.

$320 upon net incomes of $18,000; and upon net incomes in excess of $18,000 and not in excess of $20,000, 6 per centum in addition of such excess.

$440 upon net incomes of $20,000; and upon net incomes in excess of $20,000 and not in excess of $22,000, 8 per centum in addition of such excess.

$600 upon net incomes of $22,000; and upon net incomes in excess of $22,000 and not in excess of $24,000, 9 per centum in addition of such excess.

$780 upon net incomes of $24,000; and upon net incomes in excess of $24,000 and not in excess of $26,000, 10 per centum in addition of such excess.

$980 upon net incomes of $26,000; and upon net incomes in excess of $26,000 and not in excess of $28,000, 11 per centum in addition of such excess.

$1,200 upon net incomes of $28,000; and upon net incomes in excess of $28,000 and not in excess of $30,000, 12 per centum in addition of such excess.

$1,440 upon net incomes of $30,000; and upon net incomes in excess of $30,000 and not in excess of $32,000, 13 per centum in addition of such excess.

$1,700 upon net incomes of $32,000; and upon net incomes in excess of $32,000 and not in excess of $36,000, 15 per centum in addition of such excess.

$2,300 upon net incomes of $36,000; and upon net incomes in excess of $36,000 and not in excess of $38,000, 16 per centum in addition of such excess.

$2,620 upon net incomes of $38,000; and upon net incomes in excess of $38,000 and not in excess of $40,000, 17 per centum in addition of such excess.

$2,960 upon net incomes of $40,000; and upon net incomes in excess of $40,000 and not in excess of $42,000, 18 per centum in addition of such excess.

$3,320 upon net incomes of $42,000; and upon net incomes in excess of $42,000 and not in excess of $44,000, 19 per centum in addition of such excess.

$3,700 upon net incomes of $44,000; and upon net incomes in excess of $44,000 and not in excess of $46,000, 20 per centum in addition of such excess.

$4,100 upon net incomes of $46,000; and upon net incomes in excess of $46,000 and not in excess of $48,000, 21 per centum in addition of such excess.

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$4,520 upon net incomes of $48,000; and upon net incomes in excess of $48,000 and not in excess of $50,000, 22 per centum in addition of such excess.
$4,960 upon net incomes of $50,000; and upon net incomes in excess of $50,000 and not in excess of $52,000, 23 per centum in addition of such excess.
$5,420 upon net incomes of $52,000; and upon net incomes in excess of $52,000 and not in excess of $54,000, 24 per centum in addition of such excess.
$5,900 upon net incomes of $54,000; and upon net incomes in excess of $54,000 and not in excess of $56,000, 25 per centum in addition of such excess.
$6,400 upon net incomes of $56,000; and upon net incomes in excess of $56,000 and not in excess of $58,000, 26 per centum in addition of such excess.
$6,920 upon net incomes of $58,000; and upon net incomes in excess of $58,000 and not in excess of $60,000, 27 per centum in addition of such excess.
$7,460 upon net incomes of $60,000; and upon net incomes in excess of $60,000 and not in excess of $62,000, 28 per centum in addition of such excess.
$8,020 upon net incomes of $62,000; and upon net incomes in excess of $62,000 and not in excess of $64,000, 29 per centum in addition of such excess.
$8,600 upon net incomes of $64,000; and upon net incomes in excess of $64,000 and not in excess of $66,000, 30 per centum in addition of such excess.
$9,200 upon net incomes of $66,000; and upon net incomes in excess of $66,000 and not in excess of $68,000, 31 per centum in addition of such excess.
$9,820 upon net incomes of $68,000; and upon net incomes in excess of $68,000 and not in excess of $70,000, 32 per centum in addition of such excess.
$10,460 upon net incomes of $70,000; and upon net incomes in excess of $70,000 and not in excess of $72,000, 33 per centum in addition of such excess.
$11,120 upon net incomes of $72,000; and upon net incomes in excess of $72,000 and not in excess of $74,000, 34 per centum in addition of such excess.
$11,800 upon net incomes of $74,000; and upon net incomes in excess of $74,000 and not in excess of $76,000, 35 per centum in addition of such excess.
$12,500 upon net incomes of $76,000; and upon net incomes in excess of $76,000 and not in excess of $78,000, 36 per centum in addition of such excess.
$13,220 upon net incomes of $78,000; and upon net incomes in excess of $78,000 and not in excess of $80,000, 37 per centum in addition of such excess.
$13,960 upon net incomes of $80,000; and upon net incomes in excess of $80,000 and not in excess of $82,000, 38 per centum in addition of such excess.
$14,720 upon net incomes of $82,000; and upon net incomes in excess of $82,000 and not in excess of $84,000, 39 per centum in addition of such excess.
$15,500 upon net incomes of $84,000; and upon net incomes in excess of $84,000 and not in excess of $86,000, 40 per centum in addition of such excess.
$16,300 upon net incomes of $86,000; and upon net incomes in excess of $86,000 and not in excess of $88,000, 41 per centum in addition of such excess.
$17,120 upon net incomes of $88,000; and upon net incomes in excess of $88,000 and not in excess of $90,000, 42 per centum in addition of such excess.
$17,960 upon net incomes of $90,000; and upon net incomes in excess of $90,000 and not in excess of $92,000, 43 per centum in addition of such excess.
$18,820 upon net incomes of $92,000; and upon net incomes in excess of $92,000 and not in excess of $94,000, 44 per centum in addition of such excess.
$19,700 upon net incomes of $94,000; and upon net incomes in excess of $94,000 and not in excess of $96,000, 45 per centum in addition of such excess.
$20,600 upon net incomes of $96,000; and upon net incomes in excess of $96,000 and not in excess of $98,000, 46 per centum in addition of such excess.
$21,520 upon net incomes of $98,000; and upon net incomes in excess of $98,000 and not in excess of $100,000, 47 per centum in addition of such excess.
$22,460 upon net incomes of $100,000; and upon net incomes in excess of $100,000 and not in excess of $150,000, 48 per centum in addition of such excess.
$46,460 upon net incomes of $150,000; and upon net incomes in excess of $150,000 and not in excess of $200,000, 49 per centum in addition of such excess.
$70,960 upon net incomes of $200,000; and upon net incomes in excess of $200,000 and not in excess of $300,000, 50 per centum in addition of such excess.

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$120,960 upon net incomes of $300,000; and upon net incomes in excess of $300,000 and not in excess of $400,000, 51 per centum in addition of such excess.

$171,960 upon net incomes of $400,000; and upon net incomes in excess of $400,000 and not in excess of $500,000, 52 per centum in addition of such excess.

$223,960 upon net incomes of $500,000; and upon net incomes in excess of $500,000 and not in excess of $750,000, 53 per centum in addition of such excess.

$356,460 upon net incomes of $750,000; and upon net incomes in excess of $750,000 and not in excess of $1,000,000, 54 per centum in addition of such excess.

$491,460 upon net incomes of $1,000,000; and upon net incomes in excess of 1,000,000, 55 per centum in addition of such excess.

TAX ON CORPORATIONS.

SEC. 13. (*a*) **Rate of Tax.**—There shall be levied, collected, and paid for each taxable year upon the net income of every corporation, a tax of 13¾ per centum of the amount of the net income in excess of the credit against net income provided in section 26.

(*b*) **Exempt Corporations.**—For corporations exempt from tax, see section 103.

(*c*) **Improper Accumulation of Surplus.**—For tax on corporations which accumulate surplus to evade surtax on stockholders, see section 104.

TAXABLE PERIOD EMBRACING YEARS WITH DIFFERENT LAWS.

SEC. 14. If a taxable period embraces portions of two calendar years for which the laws are different, the tax shall be computed as provided in section 105.

COMPUTATION OF NET INCOME.

NET INCOME.

SEC. 21. "Net income" means the gross income computed under section 22, less the deductions allowed by section 23.

GROSS INCOME.

SEC. 22. (*a*) **General Definition.**—"Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever.

In the case of Presidents of the United States and judges of courts of the United States taking office after the date of the enactment of this Act, the compensation received as such shall be included in gross income; and all Acts fixing the compensation of such Presidents and judges are hereby amended accordingly.

(*b*) **Exclusions from Gross Income.**—The following items shall not be included in gross income and shall be exempt from taxation under this title:

(1) LIFE INSURANCE.—Amounts received under a life insurance contract paid by reason of the death of the insured, whether in a single sum or in installments (but if such amounts are held by the insurer under an agreement to pay interest thereon, the interest payments shall be included in gross income);

(2) ANNUITIES, ETC.—Amounts received (other than amounts paid by reason of the death of the insured and interest payments on such amounts) under a life insurance, endowment, or annuity contract, but if such amounts (when added to amounts received before the taxable year under such contract) exceed the aggregate premiums or consideration paid (whether or not paid

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during the taxable year) then the excess shall be included in gross income. In the case of a transfer for a valuable consideration, by assignment or otherwise, of a life insurance, endowment, or annuity contract, or any interest therein, only the actual value of such consideration and the amount of the premiums and other sums subsequently paid by the transferee shall be exempt from taxation under paragraph (1) or this paragraph;

(3) GIFTS, BEQUESTS, AND DEVISES.—The value of property acquired by gift, bequest, devise, or inheritance (but the income from such property shall be included in gross income);

(4) TAX-FREE INTEREST.—Interest upon (A) the obligations of a State, Territory, or any political subdivision thereof, or the District of Columbia; or (B) securities issued under the provisions of the Federal Farm Loan Act, or under the provisions of such Act as amended; or (C) the obligations of the United States or its possessions. Every person owning any of the obligations or securities enumerated in clause (A), (B), or (C) shall, in the return required by this title, submit a statement showing the number and amount of such obligations and securities owned by him and the income received therefrom, in such form and with such information as the Commissioner may require. In the case of obligations of the United States issued after September 1, 1917 (other than postal savings certificates of deposit), the interest shall be exempt only if and to the extent provided in the respective Acts authorizing the issue thereof as amended and supplemented, and shall be excluded from gross income only if and to the extent it is wholly exempt to the taxpayer from the taxes imposed by this title;

(5) COMPENSATION FOR INJURIES OR SICKNESS.—Amounts received, through accident or health insurance or under workmen's compensation acts, as compensation for personal injuries or sickness, plus the amount of any damages received whether by suit or agreement on account of such injuries or sickness;

(6) MINISTERS.—The rental value of a dwelling house and appurtenances thereof furnished to a minister of the gospel as part of his compensation;

(7) MISCELLANEOUS ITEMS.—The following items, to the extent provided in section 116:

Earned income from sources without the United States;
Salaries of certain Territorial employees;
The income of foreign governments;
Income of States, municipalities and other political subdivisions;
Receipts of shipowners mutual protection and indemnity associations;
Dividends from China Trade Act corporations.

(*c*) **Inventories.**—Whenever in the opinion of the Commissioner the use of inventories is necessary in order clearly to determine the income of any taxpayer, inventories shall be taken by such taxpayer upon such basis as the Commissioner, with the approval of the Secretary, may prescribe as conforming as nearly as may be to the best accounting practice in the trade or business and as most clearly reflecting the income.

(*d*) **Distributions by Corporations.**—Distributions by corporations shall be taxable to the shareholders as provided in section 115.

(*e*) **Determination of Gain or Loss.**—In the case of a sale or other disposition of property, the gain or loss shall be computed as provided in tions 111, 112, and 113.

(*f*) **Gross Income from Sources within and without United States.**—For computation of gross income from sources within and without the United States, see section 119.

ITEMS NOT DEDUCTIBLE.

SEC. 24. (*a*) **General Rule.**—In computing net income no deduction shall in any case be allowed in respect of—

(1) Personal, living, or family expenses;

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(2) Any amount paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate;

(3) Any amount expended in restoring property or in making good the exhaustion thereof for which an allowance is or has been made; or

(4) Premiums paid on any life insurance policy covering the life of any officer or employee, or of any person financially interested in any trade or business carried on by the taxpayer, when the taxpayer is directly or indirectly a beneficiary under such policy.

(*b*) **Holders of Life or Terminable Interest.**—Amounts paid under the laws of any State, Territory, District of Columbia, possession of the United States, or foreign country as income to the holder of a life or terminable interest acquired by gift, bequest, or inheritance shall not be reduced or diminished by any deduction for shrinkage (by whatever name called) in the value of such interest due to the lapse of time, nor by any deduction allowed by this Act (except the deductions provided for in subsections (*k*) and (*l*) of section 23) for the purpose of computing the net income of an estate or trust but not allowed under the laws of such State, Territory, District of Columbia, possession of the United States, or foreign country for the purpose of computing the income to which such holder is entitled.

(*c*) **Tax Withheld on Tax-free Covenant Bonds.**—For tax withheld on tax-free covenant bonds, see section 143(*a*) (3).

CREDITS OF INDIVIDUAL AGAINST NET INCOME.

SEC. 25. There shall be allowed for the purpose of the normal tax, but not for the surtax, the following credits against the net income:

(*a*) **Dividends.**—The amount received as dividends—

(1) From a domestic corporation which is subject to taxation under this title, or

(2) From a foreign corporation when it is shown to the satisfaction of the Commissioner that more than 50 per centum of the gross income of such foreign corporation for the three-year period ending with the close of its taxable year preceding the declaration of such dividends (or for such part of such period as the corporation has been in existence) was derived from sources within the United States as determined under the provisions of section 119.

The credit allowed by this subsection shall not be allowed in respect of dividends received from a corporation organized under the China Trade Act, 1922, or from a corporation which under section 251 is taxable only on its gross income from sources within the United States by reason of its receiving a large percentage of its gross income from sources within a possession of the United States.

(*b*) **Interest on United States Obligations.**—The amount received as interest upon obligations of the United States which is included in gross income under section 22.

(*c*) **Personal Exemption.**—In the case of a single person, a personal exemption of $1,000; or in the case of the head of a family or a married person living with husband or wife, a personal exemption of $2,500. A husband and wife living together shall receive but one personal exemption. The amount of such personal exemption shall be $2,500. If such husband and wife make separate returns, the personal exemption may be taken by either or divided between them.

(*d*) **Credit for Dependents.**—$400 for each person (other than husband or wife) dependent upon and receiving his chief support from the taxpayer if such dependent person is under eighteen years of age or is incapable of self-support because mentally or physically defective.

(*e*) **Change of Status.**—If the status of the taxpayer, in so far as it affects the personal exemption or credit for dependents, changes during the taxable year, the personal exemption and credit shall be apportioned, under rules and

regulations prescribed by the Commissioner, with the approval of the Secretary, in accordance with the number of months before and after such change. For the purpose of such apportionment a fractional part of a month shall be disregarded unless it amounts to more than half a month, in which case it shall be considered as a month.

CREDITS OF CORPORATION AGAINST NET INCOME.

SEC. 26. For the purpose only of the tax imposed by section 13 there shall be allowed as a credit against net income the amount received as interest upon obligations of the United States which is included in gross income under section 22.

CREDITS AGAINST TAX.

TAXES OF FOREIGN COUNTRIES AND POSSESSIONS OF UNITED STATES.

SEC. 31. The amount of income, war-profits, and excess-profits taxes imposed by foreign countries or possessions of the United States shall be allowed as a credit against the tax, to the extent provided in section 131.

TAXES WITHHELD AT SOURCE.

SEC. 32. The amount of tax withheld at the source under section 143 shall be allowed as a credit against the tax.

ERRONEOUS PAYMENTS.

SEC. 33. (*a*) **Credit for Overpayments.**—For credit against the tax of overpayments of taxes imposed by this title for other taxable years, see section 322.

(*b*) **Fiscal Year Ending in 1932.**—For credit against the tax of amounts of tax paid for a fiscal year beginning in 1931 and ending in 1932, see section 132.

ACCOUNTING PERIODS AND METHODS OF ACCOUNTING.

GENERAL RULE.

SEC. 41. The net income shall be computed upon the basis of the taxpayer's annual accounting period (fiscal year or calendar year, as the case may be) in accordance with the method of accounting regularly employed in keeping the books of such taxpayer; but if no such method of accounting has been so employed, or if the method employed does not clearly reflect the income, the computation shall be made in accordance with such method as in the opinion of the Commissioner does clearly reflect the income. If the taxpayer's annual accounting period is other than a fiscal year as defined in section 48 or if the taxpayer has no annual accounting period or does not keep books, the net income shall be computed on the basis of the calendar year. (For use of inventories, see section 22(*c*).)

PERIOD IN WHICH ITEMS OF GROSS INCOME INCLUDED.

SEC. 42. The amount of all items of gross income shall be included in the gross income for the taxable year in which received by the taxpayer, unless, under methods of accounting permitted under section 41, any such amounts are to be properly accounted for as of a different period.

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PERIOD FOR WHICH DEDUCTIONS AND CREDITS TAKEN.

SEC. 43. The deductions and credits provided for in this title shall be taken for the taxable year in which "paid or accrued" or "paid or incurred," dependent upon the method of accounting upon the basis of which the net income is computed, unless in order to clearly reflect the income the deductions or credits should be taken as of a different period.

RETURNS AND PAYMENT OF TAX.

INDIVIDUAL RETURNS.

SEC. 51. (*a*) **Requirement.**—The following individuals shall each make under oath a return stating specifically the items of his gross income and the deductions and credits allowed under this title—

(1) Every individual having a net income for the taxable year of $1,000 or over, if single, or if married and not living with husband or wife;

(2) Every individual having a net income for the taxable year of $2,500 or over, if married and living with husband or wife; and

(3) Every individual having a gross income for the taxable year of $5,000 or over, regardless of the amount of his net income.

(*b*) **Husband and Wife.**—If a husband and wife living together have an aggregate net income for the taxable year of $2,500 or over, or an aggregate gross income for such year of $5,000 or over—

(1) Each shall make such a return, or

(2) The income of each shall be included in a single joint return, in which case the tax shall be computed on the aggregate income.

(*c*) **Persons under Disability.**—If the taxpayer is unable to make his own return, the return shall be made by a duly authorized agent or by the guardian or other person charged with the care of the person or property of such taxpayer.

(*d*) **Fiduciaries.**—For returns to be made by fiduciaries, see section 142.

CORPORATION RETURNS.

SEC. 52. (*a*) **Requirement.**—Every corporation subject to taxation under this title shall make a return, stating specifically the items of its gross income and the deductions and credits allowed by this title. The return shall be sworn to by the president, vice president, or other principal officer and by the treasurer or assistant treasurer. In cases where receivers, trustees in bankruptcy, or assignees are operating the property or business of corporations, such receivers, trustees, or assignees shall make returns for such corporations in the same manner and form as corporations are required to make returns. Any tax due on the basis of such returns made by receivers, trustees, or assignees shall be collected in the same manner as if collected from the corporations of whose business or property they have custody and control.

(*b*) **Consolidated Returns.**—For provision as to consolidated returns of affiliated corporations, see section 141.

TIME AND PLACE FOR FILING RETURNS.

SEC. 53. (*a*) **Time for Filing.**

(1) GENERAL RULE.—Returns made on the basis of the calendar year shall be made on or before the 15th day of March following the close of the calendar year. Returns made on the basis of a fiscal year shall be made on or before the 15th day of the third month following the close of the fiscal year.

(2) EXTENSION OF TIME.—The Commissioner may grant a reasonable extension of time for filing returns, under such rules and regulations as he shall prescribe with the approval of the Secretary. Except in the case of taxpayers who are abroad, no such extension shall be for more than six months.

(*b*) **To Whom Return Made.**

(1) INDIVIDUALS.—Returns (other than corporation returns) shall be made to the collector for the district in which is located the legal residence or prin-

cipal place of business of the person making the return, or, if he has no legal residence or principal place of business in the United States, then to the collector at Baltimore, Maryland.

(2) CORPORATIONS.—Returns of corporations shall be made to the collector of the district in which is located the principal place of business or principal office or agency of the corporation, or, if it has no principal place of business or principal office or agency in the United States, then to the collector at Baltimore, Maryland.

RECORDS AND SPECIAL RETURNS.

SEC. 54. (*a*) **By Taxpayer.**—Every person liable to any tax imposed by this title or for the collection thereof, shall keep such records, render under oath such statements, make such returns, and comply with such rules and regulations, as the Commissioner, with the approval of the Secretary, may from time to time prescribe.

(*b*) **To Determine Liability to Tax.**—Whenever in the judgment of the Commissioner necessary he may require any person, by notice served upon him, to make a return, render under oath such statements, or keep such records, as the Commissioner deems sufficient to show whether or not such person is liable to tax under this title.

(*c*) **Information at the Source.**—For requirement of statements and returns by one person to assist in determining the tax liability of another person, see sections 147 to 150.

PUBLICITY OF RETURNS.

SEC. 55. Returns made under this title shall be open to inspection in the same manner, to the same extent, and subject to the same provisions of law, including penalties, as returns made under Title II of the Revenue Act of 1926.

PAYMENT OF TAX.

SEC. 56. (*a*) **Time of Payment.**—The total amount of tax imposed by this title shall be paid on the fifteenth day of March following the close of the calendar year, or, if the return should be made on the basis of a fiscal year, then on the fifteenth day of the third month following the close of the fiscal year.

(*b*) **Installment Payments.**—The taxpayer may elect to pay the tax in four equal installments, in which case the first installment shall be paid on the date prescribed for the payment of the tax by the taxpayer, the second installment shall be paid on the fifteenth day of the third month, the third installment on the fifteenth day of the sixth month, and the fourth installment on the fifteenth day of the ninth month, after such date. If any installment is not paid on or before the date fixed for its payment, the whole amount of the tax unpaid shall be paid upon notice and demand from the collector.

(*c*) **Extension of Time for Payment.**—At the request of the taxpayer, the Commissioner may extend the time for payment of the amount determined as the tax by the taxpayer, or any installment thereof, for a period not to exceed six months from the date prescribed for the payment of the tax or an installment thereof. In such case the amount in respect of which the extension is granted shall be paid on or before the date of the expiration of the period of the extension.

(*d*) **Voluntary Advance Payment.**—A tax imposed by this title, or any installment thereof, may be paid, at the election of the taxpayer, prior to the date prescribed for its payment.

(*e*) **Advance Payment in Case of Jeopardy.**—For advance payment in case of jeopardy, see section 146.

(*f*) **Tax Withheld at Source.**—For requirement of withholding tax at the source in the case of nonresident aliens and foreign corporations, and in the case of so-called "tax-free covenant bonds," see sections 143 and 144.

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(*g*) **Fractional Parts of Cent.**—In the payment of any tax under this title a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

(*h*) **Receipts.**—Every collector to whom any payment of any income tax is made shall upon request give to the person making such payment a full written or printed receipt, stating the amount paid and the particular account for which such payment was made; and whenever any debtor pays taxes on account of payments made or to be made by him to separate creditors the collector shall, if requested by such debtor, give a separate receipt for the tax paid on account of each creditor in such form that the debtor can conveniently produce such receipts separately to his several creditors in satisfaction of their respective demands up to the amounts stated in the receipts; and such receipt shall be sufficient evidence in favor of such debtor to justify him in withholding from his next payment to his creditor the amount therein stated; but the creditor may, upon giving to his debtor a full written receipt acknowledging the payment to him of any sum actually paid and accepting the amount of tax paid as aforesaid (specifying the same) as a further satisfaction of the debt to that amount, require the surrender to him of such collector's receipt.

INFORMATION AT SOURCE.

SEC. 147. (*a*) **Payments of $1,000 or More.**—All persons, in whatever capacity acting, including lessees or mortgagors of real or personal property, fiduciaries, and employers, making payment to another person, of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income (other than payments described in section 148(*a*) or 149), of $1,000 or more in any taxable year, or, in the case of such payments made by the United States, the officers or employees of the United States having information as to such payments and required to make returns in regard thereto by the regulations hereinafter provided for, shall render a true and accurate return to the Commissioner, under such regulations and in such form and manner and to such extent as may be prescribed by him with the approval of the Secretary, setting forth the amount of such gains, profits, and income, and the name and address of the recipient of such payment.

(*b*) **Returns Regardless of Amount of Payment.**—Such returns may be required, regardless of amounts, (1) in the case of payments of interest upon bonds, mortgages, deeds of trust, or other similar obligations of corporations, and (2) in the case of collections of items (not payable in the United States) of interest upon the bonds of foreign countries and interest upon the bonds of and dividends from foreign corporations by persons undertaking as a matter of business or for profit the collection of foreign payments of such interest or dividends by means of coupons, checks, or bills of exchange.

(*c*) **Recipient to Furnish Name and Address.**—When necessary to make effective the provisions of this section the name and address of the recipient of income shall be furnished upon demand of the person paying the income.

(*d*) **Obligations of United States.**—The provisions of this section shall not apply to the payment of interest on obligations of the United States.

INFORMATION BY CORPORATIONS.

SEC. 148. (*a*) **Dividend Payments.**—Every corporation subject to the tax imposed by this title shall, when required by the Commissioner, render a correct return, duly verified under oath, of its payments of dividends, stating the name and address of each shareholder, the number of shares owned by him, and the amount of dividends paid to him.

(*b*) **Profits of Taxable Year Declared as Dividends.**—There shall be included in the return or appended thereto a statement of such facts as will enable the Commissioner to determine the portion of the earnings or profits

of the corporation (including gains, profits, and income not taxed) accumulated during the taxable year for which the return is made, which have been distributed or ordered to be distributed, respectively, to its shareholders during such year.

(*c*) **Accumulated Gains and Profits.**—When requested by the Commissioner, or any collector, every corporation shall forward to him a correct statement of accumulated gains and profits and the names and addresses of the individuals or shareholders who would be entitled to the same if divided or distributed, and the amounts that would be payable to each.

RETURNS OF BROKERS.

SEC. 149. Every person doing business as a broker shall, when required by the Commissioner, render a correct return duly verified under oath, under such rules and regulations as the Commissioner, with the approval of the Secretary, may prescribe, showing the names of customers for whom such person has transacted any business, with such details as to the profits, losses, or other information which the Commissioner may require, as to each of such customers, as will enable the Commissioner to determine whether all income tax due on profits or gains of such customers has been paid.

PARTNERSHIPS.

PARTNERSHIP NOT TAXABLE.

SEC. 181. Individuals carrying on business in partnership shall be liable for income tax only in their individual capacity.

TAX OF PARTNERS.

SEC. 182. (*a*) **General Rule.**—There shall be included in computing the net income of each partner his distributive share, whether distributed or not, of the net income of the partnership for the taxable year. If the taxable year of a partner is different from that of the partnership, the amount so included shall be based upon the income of the partnership for any taxable year of the partnership ending within his taxable year.

(*b*) **Partnership Year Embracing Calendar Years with Different Laws.**—If a fiscal year of a partnership begins in one calendar year and ends in another calendar year, and the law applicable to the second calendar year is different from the law applicable to the first calendar year, then

(1) the rates for the calendar year during which such fiscal year begins shall apply to an amount of each partner's share of such partnership net income (determined under the law applicable to such calendar year) equal to the proportion which the part of such fiscal year falling within such calendar year bears to the full fiscal year, and

(2) the rates for the calendar year during which such fiscal year ends shall apply to an amount of each partner's share of such partnership net income (determined under the law applicable to such calendar year) equal to the proportion which the part of such fiscal year falling within such calendar year bears to the full fiscal year.

In such cases the part of such income subject to the rates in effect for the most recent calendar year shall be added to the other income of the taxpayer subject to such rates and the resulting amount shall be placed in the lower brackets of the rate schedule applicable to such year, and the part of such income subject to the rates in effect for the next preceding calendar year shall be placed in the next higher brackets of the rate schedule applicable to such year.

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COMMERCIAL LAW

BOOK I

CONTRACTS

Law Classified — Objects of Law — Formation of Contracts — Capacity of the Parties—Offer and Acceptance—Form and Consideration — Reality of Consent — Legality — Operation — Interpretation—Discharge.

THE subject of commercial law, involving the rules of action governing every variety of dispute arising out of mercantile transactions, is one of constantly increasing importance, in view of the diverse complications incident to the expansion of commercial activities. A general knowledge of that science which constitutes the guardian of a man's natural rights and the rule of his civil conduct should, therefore, form a very useful part of every liberal education and be of invaluable assistance in every-day business life.

As a necessary introduction to the study of commercial law, it will conduce to a clearer understanding of the subject to consider briefly the origin, object and classification of law in general.

Law has been defined to be a rule of action prescribed by a superior power. Thus when God created the world out of chaos, he impressed upon matter certain principles (laws) which are immutable, governing both the animate and inanimate universe. We are concerned, however, not with physical or mechanical laws, but only with the rules or laws of human action or conduct. Man, being divinely endowed with reason and will power, is enabled to distinguish between what is right and what is wrong, and to act accordingly. Originally there was no necessity for the existence of any law other than natural law, but as the population increased, it became imperative for the protection of life, liberty and property for society to regulate the rights of its members by a system of laws which we call municipal law.

Law Classified.

Law may be conveniently classified under the four following divisions: Natural or moral law, divine or revealed law, international law and municipal law.

Natural law consists of that body of law appertaining to man in a state of nature, viz., the right to live and enjoy personal security and private property. The divine or revealed law consists of the rules of action revealed by God to man through

the medium of specially-chosen and inspired men. Throughout Christendom this revealed law is contained in the Holy Scriptures. In Oriental countries, where different religious beliefs prevail, the source of the revealed law depends upon the religion followed in each particular country, the Mohammedans looking to the Koran, the Chinese to the writings of Confucius, the people of India and Japan to the writings of Buddha. Although very few obey the divine or revealed law in all of its high requirements, it doubtless exercises a far more potent influence upon the actions of men than any system of human laws ever promulgated, which, however, usually conforms therewith. International law comprises the rules of action adopted by independent nations to regulate the relations between them. Municipal law is defined to be "a rule of civil conduct prescribed by the supreme power in a state, commanding what is right and prohibiting what is wrong," being applied to the laws of a state or nation as well as those of a municipality. It is to be observed that municipal law does not attempt to punish every wrong, but only in so far as such wrong affects or interferes with the rights of others, taking cognizance only of concrete actions. Thus a man may be as morally depraved as possible, nevertheless municipal law will not interfere with him unless such moral obliquity results in some positive injury to another.

Municipal law is composed of both the written law (*lex scripta*) and the unwritten law (*lex non scripta*).

The written law comprises the laws or statutes enacted by the legislative body of the state, as, for example, the acts of parliament in England, the acts of congress in this country, the acts passed by the several state legislatures and borough or city ordinances. The written or statutory law is either declaratory of the common law, *i. e.*, made for the purpose of rendering more definite the principles thereof, or is enacted for the purpose of changing the common law to meet the exigencies that arise with advancing civilization.

The unwritten law, which is by far the most extensive branch of jurisprudence, is divided into two divisions, to wit, the civil law and the common law.

The civil law is that system of law under which the greater part of Continental Europe is governed, its foundation dating from the Tarquinian kings of Rome and being gradually developed until the downfall of the Roman Empire. This body of laws, consisting of the edicts of the Roman kings, emperors and senate, together with the opinions of men learned in the law, was classified and embodied in a code by the Roman emperor

Justinian, which compilation of laws is known as the Justinian Code. This code was at a much later date revised by Napoleon I, the Code Napoleon being used in France today, and, with certain modifications, in Germany, Holland, Spain and Italy. The civil law, although radically different from our own system, has exercised considerable influence upon it, being introduced into England in 1066 by William the Conqueror. The fact that Louisiana and the greater part of our territory recently acquired from Spain is governed largely by the civil law, makes its study a matter of considerable present interest.

The common law, which is that beneficent system of laws in force throughout England and the United States, was brought here by our English ancestors and had its origin in ancient customs and usages. In earliest antiquity, before any necessity arose for the organization of courts of justice, disputes between man and man were settled entirely according to custom. If it was usual to follow a particular course of action under certain circumstances, such a course of action became custom and would regulate all subsequent situations of a similar character, and anyone undertaking to follow a different course of action than that dictated by custom would meet with the opposition of the public and would be compelled to acquiesce in the custom, which eventually became the law. When courts of justice were established, these customs were recognized as the law of the land, but to become law it was necessary for a custom to have existed, to use a familiar phrase, "from a time whereof the memory of man runneth not to the contrary." These customs, of course, would vary in different communities and consequently widely different and conflicting customs existed in different parts of England, which, up to the time of Alfred the Great, was divided into a number of small kingdoms, each observing its own particular customs or laws. King Alfred the Great, however, among his many other useful labors, undertook to digest the customs prevailing throughout his kingdom for the purpose of facilitating the administration of justice, which work constitutes the foundation of that great system of laws which regulates every English-speaking country today. After the organization of courts of justice became general, if a particular dispute arose between two individuals, to settle which no custom could be found, the judge before whom the case was tried would himself decide the case, stating the reasons for his decision, which would constitute a precedent to govern any subsequent dispute involving the same point or points. The multitude of these decisions, the reports of which fill thousands of volumes, forms the body of our common

law, and unless such opinions are reversed by an appellate court, they are binding upon all courts within the same jurisdiction subject to the limitation that they must not contravene the provisions of either the State or Federal Constitution.

Objects of Law.

Having ascertained briefly the manner in which law is formed, we will next direct our attention to an inquiry into the general objects of law. The objects of law are (1) the protection of rights and (2) the redress of wrongs. Law which sets forth the rights possessed by man and what constitutes an infraction of those rights, comprises what is known as the Substantive Law. That branch of law providing the methods whereby wrongs are redressed is known as the Remedial Law.

Substantive law, as above indicated, relates to rights which the law recognizes and will enforce and such legal wrongs for which the law provides redress. Now rights may be subdivided into the rights of persons, being such rights as are annexed to the person of man, as distinguished from rights appertaining to property, the rights of persons including the rights growing out of the relation of master and servant, the marital relation, guardian and ward, as well as the rights and liabilities of corporations. The law regulating the rights of things defines the rights incident to the acquisition and ownership of property both real and personal.

Referring to the second division of substantive law, wrongs are of two kinds: First, wrongs which affect the entire community, known as public wrongs, commonly called crimes; and, secondly, wrongs which affect an individual only, known as private wrongs, in legal parlance referred to as torts.

We observed above that remedial law (the second general division of municipal law) was that branch of jurisprudence which provided the means whereby wrongs may be redressed. This purpose is accomplished by two methods, either by application to what are known as common-law courts, which were the oldest courts organized in England, being rigidly bound by common-law precedents, or by application to a court of equity upon purely equitable principles. Courts of equity were organized for the purpose of administering exact justice between litigants whose rights would otherwise be prejudiced in a common-law court by virtue of its limitations, being bound, as above noted, strictly by precedent, the object of a court of equity being to apply conscience to questions in controversy, rather than mere formal rules from which a common-law court cannot deviate and

which frequently fall short of doing complete justice. Equity is administered in separate courts of chancery in some states, but a majority of the states apply equity in their common law courts.

In the early ages land was practically the only property of value, and naturally the law first developed was that relating to real estate. However, when it become impossible for everyone to earn a livelihood through the tillage of the soil, and the fine arts and mechanical trades were developed, the law applicable to personal property acquired transcendent importance, the value of personal property rising, as Chancellor Kent observes, superior to real property in its influence over the talents, passions and destiny of mankind. In the pursuit of trade, the necessity of compelling men to fulfil their agreements gave rise to the law of contracts. As commerce developed and expanded into foreign countries it became necessary for a man to conduct his business through the agency of another, which gave rise to the law of agency. When it became inconvenient to make payment in currency for obligations contracted, to facilitate freedom of exchange, negotiable instruments came into vogue. Furthermore, the expediency was soon recognized of combining capital and labor for the promotion of commerce, and consequently the law regulating business associations, such as partnerships, corporations and joint-stock companies has assumed a foremost place in modern jurisprudence.

With the foregoing very brief synopsis of the origin, object and classification of law, it is hoped that the reader will be better able to follow the subjects we shall proceed to discuss.

Contracts.

Inasmuch as the law of contracts in its several phases enters into practically every business transaction, this subject should naturally receive consideration first, particularly as every department of commercial law is, to a greater or less extent, referable to the theory of contract law.

Let us at the outset clearly understand what is meant by a contract. If A agrees to sell to B 100 barrels of sugar, which B agrees to buy, this contract confers certain rights upon both parties, the right of A to receive payment upon delivery of the sugar and the right of B to have A furnish him the same upon payment of the stipulated price. The relation between A and B constitutes what is known as a contract. Every contract includes two elements—(1) agreement and (2) obligation. A mere agreement between two or more parties does not in itself

constitute a contract; thus an agreement to keep a social engagement will not amount to a contract, because it is necessary that mutual obligations be imposed upon the parties in order to create a contract, which obligations are enforceable at law. To make an agreement which results in a legal contract there must be two or more parties having legal capacity to make a contract, and the agreement which imposes mutual obligations upon them must be definitely expressed. Such expression of intention must consist of a definite offer made by one party, which is accepted by the other. Furthermore, such an agreement must either be expressed in a particular form, *i. e.*, it must either be made under seal, or there must be a consideration to support the agreement, the significance of which we will be able to understand more fully hereafter. Again, the expression of agreement must not be the result of fraud, deceit or coercion, it being necessary that the agreement entered into must be *bona fide*. Lastly, the object of the agreement must not conflict with either the statute law or common law of the state, or be opposed to any rule of public policy.

We are now in a better position to define a contract, which may be said to be an agreement, enforceable at law, made between two or more persons, in which each party comes under an obligation to the other, and each reciprocally acquires a right to whatever is promised by the other.

The subject of contracts may be considered under the four following divisions: (1) The formation of a contract, involving a consideration of how a contract is made; (2) the operation of a contract, viz., when made, whom does it affect; (3) the interpretation of a contract, which includes (*a*) the evidence required to prove its existence, and (*b*) the construction placed by the courts upon its terms; and (4) the discharge of a contract, or how the relation established by a contract may be terminated.

The Formation of Contract.

The essential elements entering into the formation of every valid contract will be considered with reference to:

1. The capacity of the parties to make a contract.
2. The communication by the parties of their intention by an offer and acceptance.
3. The form and consideration required by law as evidence of the intention of the parties to affect their legal relations.
4. The reality of the consent embodied in the agreement of the parties.
5. The legality of the objects sought to be effected by the contract.

The discussion of the capacity of the parties to make a contract involves in reality a consideration of the various disabilities which render certain classes of people incapable of binding themselves by a promise or of enforcing a promise made to them, being exceptions to the general rule that anybody may bind himself by a contract.

The principal disabilities disqualifying a man from entering into a contract relate to infancy and lunacy, the common-law restriction against the contractual capacity of married women being largely removed by statute, so that today a married woman has the same right to contract as any other individual, with the exception that in certain states she cannot become an accommodation indorser, guarantor or surety for another.

It is a well-established rule of common law that no one under the legal age of majority can enter into a contract that will be binding. The age of majority in Pennsylvania is twenty-one years in both males and females, although in several of the states the age of majority in the female is reached at eighteen. Majority is reached on the first minute of the day preceding the day the person reaches his or her majority.

If a contract is entered into by a minor, the contract is not necessarily void, but remains in suspense, as it were, the minor having the right to ratify the contract upon attaining his majority, or he may repudiate his contract at any time during minority, or upon reaching the age of twenty-one years, or within a reasonable time thereafter; otherwise he will be deemed to have impliedly ratified the contract. For example, A being a minor, say twenty years old, purchased an automobile, agreeing to pay therefor the sum of $2,500; the automobile is accidentally destroyed, whereupon the infant decides to repudiate his contract. The seller of the machine has no redress whatever, as the contract was not binding upon the minor. If, however, the machine had not been destroyed, the vendor could recover its possession upon refusal of payment, or, if wilfully destroyed, could obtain compensation in damages under certain circumstances, or the vendor of the machine could have the minor arrested for a misdemeanor, but no action *ex contractu* would lie on account of the contract having been made with a minor.

A minor must, upon reaching the age of twenty-one years, either repudiate or ratify his contract, when it will date back to the time of the original agreement. If the contract of an infant has been executed during minority, it will be necessary for the infant to repudiate his bargain within a reasonable time after reaching his majority, otherwise the contract will be deemed

to have been ratified. If, however, the contract at the time the infant attains his majority remains executory—that is, if neither party has performed his part of the agreement—the contract is deemed to have been repudiated unless the minor takes positive steps to ratify the contract promptly. This is an important distinction which should carefully be borne in mind.

There are two classes of contracts into which a minor may enter which will be binding upon him, the exceptions being contracts for necessaries and marriage contracts, the latter class of contracts being subject to certain limitations, which it is unnecessary to discuss at this time.

The law holding a minor responsible on account of his contracts for necessaries is made for the benefit and protection of the minor, who otherwise might be unable to obtain the necessities of life in the midst of plenty. An important question arises in this connection in regard to what constitutes necessaries. This depends entirely upon the station or position in life occupied by the infant. Ordinary articles of wearing apparel, lodging and board, educational and medical expenses, etc., are generally regarded as necessaries for which an infant is bound to pay. A salesman should always be on his guard when dealing with an infant. Articles which would be regarded as necessary for a university student would not be considered necessary in the case of a plumber's apprentice. Every case depends upon its own particular circumstances, and a court is inclined to regard as necessaries only such articles as are essential to the comfort of the infant, taking into consideration the infant's position in life.

Contracts of Persons Non Compos Mentis.

A court of law will further protect all persons of unsound mind from the effect of contracts entered into by them; but, as in the case of minors, there are certain exceptions to the general rule. Let us ascertain, therefore, how far this protection extends.

If at the time of entering into a contract one of the parties thereto was incapable of understanding the purport of his act, which fact was known to the other party to the contract, it would not be binding upon the lunatic. The law is well settled that the contract of a lunatic is not binding upon him if the other party knew of his insanity, or if it had been judicially declared that the party was insane. A temporary loss of reason will not, however, affect a contract made during a lucid interval. One who entered into a contract while insane may upon regaining sanity ratify his act. A lunatic is bound by his contracts for necessaries, as in the case of infants.

Intoxication, depriving a man temporarily of his reason, is another defense frequently set forth in an action on a contract, and the law will not tolerate advantage being taken of a man sufficiently under the influence of liquor as not to be sensible of his acts. A contract made by an intoxicated person may subsequently be avoided or affirmed by him, but, as there are several degrees of intoxication, a court is very loath to allow a man to avail himself of this defense unless he can clearly establish that he was unable to transact business at the time the contract was made.

The two remaining exceptions to the rule that everybody may enter into a contract apply to alien enemies and corporations. Alien enemies have no standing in our courts, and consequently their contracts are unenforceable. A corporation cannot enter into a contract not germane to the business authorized by its charter, such contracts being *ultra vires* and void.

Offer and Acceptance.

In order to create a contract there must be a definite expression of the agreement between the parties thereto. This expression of agreement consists in an offer made by one party which is accepted by the other, and is ultimately reducible to question and answer. If A agrees to purchase from B a property worth $10,000, the agreement can be traced to a moment when B said to A, "Will you buy my property for $10,000?" and A replies, "I will." If you take up a book or other wares from a tradesman without making any agreement as to the price, the tradesman in displaying his wares says in reality, "Will you buy my goods at my price?" and you by taking them promise to do so, and hence become liable to pay therefor.

It should be carefully borne in mind that if either the offer or acceptance is indefinite, in other words, if the minds of the contracting parties do not meet by entertaining a common intention with reference to their agreement, no contract is created. For example, if A, who owns two automobiles, should say to B "I will sell you either of my machines for $2,000," and B replied by saying: "I accept your offer," there would be no contract between them because the acceptance was indefinite. If, however, B in accepting A's offer indicated the particular machine he desired to buy, the contract would be valid. It can therefore be laid down as a general rule that if an offer is made in the alternative the acceptance must indicate which alternative is accepted, in order to make a binding contract.

It is necessary, however, that an offer be free from all

ambiguity, otherwise even a definite acceptance will not create a contract. A writes a letter to B stating: "We have a few cars of bituminous coal which we would be willing to sell you," naming a price. B replied, "I accept and will take fifty cars." Query: Has a contract been made between A and B? In this illustration no contract is created, for the reason that A did not offer to sell any specific number of cars, "a few cars" being very indefinite. Presuming A only had twenty-five cars, it is clear that he would not be liable on his offer for a greater number. Consequently B, by ordering a certain number without knowing how many were included in A's offer, could not hold A liable for breach of contract. A careful business man will always observe the necessity of seeing that both the offer and acceptance are definite in their terms.

Let us next consider the manner in which an offer and acceptance may be made. A contractual relation may be entered into either by words or conduct. If A asks B to work for him for hire, by merely doing the work, B accepts A's offer and is entitled to be paid for his services. As a matter of fact, if A merely permits B to do certain work for his benefit under such circumstances that no reasonable man would suppose that B was doing the work for nothing, A would be liable to pay therefor. The doing of the work is the offer, the permission to do it or the acquiescence in its being done is the acceptance. Upon the same principle, if A delivers certain goods to B's residence which goods B accepts and uses, B will be liable to pay what the goods are worth.

The offer and acceptance must not only be definite, but the acceptance is required to be unconditional and identical with the terms of the offer. To illustrate this principle, if A should offer to sell B a certain piece of property for a certain sum, and B should reply by stating, "I will accept upon terms to be agreed upon later," no contract would be made because B's acceptance, which included a condition, was not absolute. Similarly, if a party in accepting an offer to purchase a bill of goods stipulates the manner in which payment is to be made, there would be no contract, on account of the attempt to introduce new terms into the agreement through the acceptance, which in reality would be making a new offer.

Although a definite offer must be made by an ascertained person, it need not be made to any particular individual, but may be made to the public in general. However, to form a contract, such offer must be accepted by a definite or particular person. A newspaper advertisement offering a reward for the return of a lost article or for the arrest and conviction of a criminal is an

instance where an offer is made to the public in general. The contract is not completed, however, until an ascertained person accepts, which is done when the lost article is returned or the criminal arrested and convicted.

Suppose, however, that a person performs an act contemplated in the offer of a reward, but in ignorance of the offer; can such person recover the reward? There is considerable conflict of authority upon this point, but it is fairly well settled that the reward cannot be recovered because a man cannot accept an offer regarding the terms of which he was ignorant, which appears to be eminently logical.

Before a contract is complete the acceptance must be communicated to the offeror (the party making the offer). Considerable litigation has arisen when, through the fault of neither party, the acceptance never reaches the offeror. It, therefore, becomes important to ascertain when an acceptance is communicated in a manner to make the contract binding. The rule may be stated to be that the contract is complete at the time when the offeree (the party to whom the offer is made) accepts the offer in the manner indicated by the offeror, it being immaterial whether or not the acceptance actually reaches the latter. To more fully understand this statement of law, consider the following illustration: A, an insurance company, makes an offer to insure B's property on January 1. On January 15, B accepts A's offer by letter, inclosing a check covering the first premium. The letter of acceptance reached the office of the company on January 17, whereas on January 16 B's property was completely destroyed by fire. In this case, if the contract was complete when the letter of acceptance was mailed, the insurance company would be liable on the policy; if not complete until January 17, the date the acceptance was received by the company, the loss would fall on the owner of the property. The courts have decided that the mailing of the letter of acceptance closed the contract, and that consequently the company was liable for the loss.

The above stated rule frequently operates as a hardship upon the offeror, as is shown by the case where A offers to sell B a certain quantity of lumber for so much per thousand feet, which offer B immediately accepts by letter, which miscarries in the mails. A not having heard from B, concludes that he does not want the lumber, and forthwith sells the same to C. B, having accepted A's offer, relies upon him to carry out his contract. This case presents a very interesting situation, but it is well settled that the party making the offer is responsible for any

miscarriage of the acceptance, because the offeror is the one who voluntarily acts, and, therefore, he assumes the risk that an acceptance communicated in a regular manner, or any special manner indicated by him, will reach him.

If, on the other hand, instead of the letter of acceptance being delayed, the letter containing the offer is postponed in delivery, a somewhat different situation arises. If the commodity sought to be sold is of a perishable nature, a duty is imposed upon the offeree to observe the date of the letter containing the offer. If the letter is not received for a considerable time after its date, an acceptance will not be binding upon the offeror.

We have observed that the offeree is bound to accept the offer in the manner indicated by the offeror. A, being a feed dealer, sent a message to B offering to sell him feed, requesting that an answer be sent back to him by A's delivery wagon. B, thinking the acceptance would be received sooner by mail, mailed his acceptance. The delivery wagon returned first, however, and A, not receiving a reply in accordance with the offer, sold the feed to C. B, having disregarded A's instructions, could not recover on the contract. His acceptance should have been sent back with the delivery wagon, the rule being that where the offeror indicates a special manner in which the offer shall be accepted, the acceptance to be binding must be made accordingly. The postoffice is the ordinary means of communication, and every person who gives another the right to communicate with him gives him the right to communicate with him in the ordinary manner. Hence, when a man posts a letter containing an acceptance of an offer he has accepted in the ordinary manner, and the contract is complete at that moment.

The above-stated rule that the mailing of a letter of acceptance concludes the contract is subject to an important qualification. If, after mailing his acceptance, the offeree decides to revoke the same he may do so, provided his revocation reaches the offeror before his letter of acceptance is actually received. The mailing of the letter of acceptance, as we have learned, completes the contract, but only in so far as the offeror is concerned, the offeree not being bound until his acceptance is received by the offeror.

The offer may also be withdrawn at any time before the acceptance is made. You offer to sell me a certain article and grant me the privilege of considering the matter until a certain hour on the following day. At the time appointed I call upon you for the purpose of accepting your offer, but before I communicate my intention to you, you withdraw your offer. No contract

would exist in this case, because no legal obligation is imposed upon a man by virtue of an offer made to another, and the offeror can always recall his offer any time before acceptance.

If no time is stipulated within which an acceptance must be made, the offer will lapse after the expiration of a reasonable time, which is determined according to the circumstances of the case. An offer also lapses upon the death of either party before acceptance.

A certain class of contracts are made by the delivery of a document stating the general terms upon which the party delivering it will enter into the proposed contract. If it is accepted without objection by the party to whom it is tendered, it is binding upon him whether or not he informs himself of its contents. This is an apparent exception to the rule that the parties must entertain a common intention with reference to the subject-matter of their agreement. In the case of railroad and steamship tickets, etc., the terms of the offer are frequently not contained upon the face of the contract, and it is quite common for a man to overlook reading the terms and conditions thereof. To cover this class of cases, the law has been established to the effect that when a man accepts a document which purports to contain the terms of an offer, the acceptance thereof is an acceptance of all the terms and conditions contained upon it and he becomes bound thereby.

Having brought the contracting parties together by an agreement expressed in a definite offer and acceptance, further evidence of the intention of the parties is yet required before an obligation will be recognized as lawfully binding upon the parties. To constitute a binding agreement, some consideration must be given as compensation for the promise contained in the contract, or certain solemnity must attach to the expression of intention to give effect to the contract, the latter requirement being complied with by making the contract under seal. In the early development of the Roman and English law, the form in which an agreement was expressed was the most important element. Originally the use of a seal was the only method whereby an executory contract could be made binding. Later the doctrine of consideration assumed predominant importance. Contracts are, therefore, divisible into two classes—(1) formal contracts, the validity of which depend upon the form in which they are expressed, and (2) simple contracts, the validity of which depend upon the presence of consideration.

Formal contracts are again divided into contracts of record and contracts under seal. The record of a judgment properly

entered in a court of record, the obligation being enforceable by order of the court and requiring none of the characteristics of a contract, is what is known as a contract of record.

A contract under seal is one which has been reduced to writing and signed and sealed by either one or both of the contracting parties. In this class of contracts the party executing the contract must attach a seal opposite his signature. In olden times this seal consisted of a wax impression and is still used upon many deeds, wills and other important documents. No particular form of seal is necessary, a mere pen mark an eighth of an inch long having been decided by the Supreme Court of Pennsylvania to be a sufficient seal. If the contract concludes with the words, "Signed, sealed and delivered," or similar phraseology, any legible marks obviously intended to represent a seal will be sufficient. If a contract required or intended to be made under seal omits a proper seal, the contract will be treated as a simple contract and require a consideration to support it. A contract under seal is held binding in the absence of consideration on the ground that when a man places his seal upon a contract he does so only upon proper reflection and deliberation, which raises the presumption that he has received an adequate consideration for his act. The most important class of contracts that are valid only if made under seal comprises deeds for the conveyance of real estate, which must not only be signed and sealed, but also delivered before any rights are conferred by them. A deed or other document delivered to a third party to hold pending the performance of certain conditions, upon which it is to be delivered to the party entitled thereto, is said to be in escrow.

We noted above that a mere gratuitous promise is not binding unless made under seal. The best illustration of such a promise is furnished in the case of a bond. A bond is a sealed instrument containing a promise to pay a stipulated sum of money, the effect of which ceases upon the performance by the party executing the bond of the condition or conditions contained therein. There are two general classes of bonds—(*a*) bonds executed for the faithful performance of duty, as in the case of a treasurer of a corporation, who gives a bond in a large sum of money, containing the proviso that if he faithfully performs the duties of his office the obligation contained in the bond is to become void; (*b*) bonds given to secure a debt. For example, suppose A owes B $1,000, which he promises to pay by July 1, 1930. A, for the protection of B, executes a bond, obligating himself to pay $2,000 (double the amount of the indebtedness), said bond containing

the provision that if he satisfy the indebtedness on or before July 1, 1930, the bond is to become void. This bond is usually accompanied by a warrant of attorney, in which the party executing the bond authorizes the other party to enter judgment in any court of record for the full amount of the bond, provided the obligation set forth therein is not fulfilled, which judgment can be executed upon the property of the party executing the bond. One should be very careful before giving a bond of this kind, as it is the most binding obligation to which a man can subject himself.

In addition to this class of contracts there are a great many contracts made under seal for the purpose of adding precision or extra solemnity to the transaction. This is done more frequently when doubt exists about the presence of consideration or where the consideration is desired to be kept secret. Contracts of any unusual importance should always be made under seal as a matter of precaution.

Consideration.

By far the most common and important class of contracts is the simple or parol contract, which requires the presence of consideration to render the same valid. It is somewhat difficult to say how consideration came to form the basis upon which the validity of a contract not under seal is established. Courts of equity not being bound by strict common-law rules endeavored to find evidence of a man's intentions in the practical results to him of his acts or promises, and hence in the case of informal or parol contracts, the question was asked, what advantage is gained or detriment suffered on account of the promise made, and if there was a *quid pro quo* for the promise, a consideration was said to exist, and the contract thereupon became enforceable

Consideration is defined to be "any benefit to the promisor or any detriment to the promisee." The benefit must come from the party to whom the promise is made (the promisee); the detriment must be suffered by the party making the promise (the promisor). The simplest illustration of this definition is afforded by the case of a promise made by A to deliver to B one hundred bales of cotton for a stipulated price. The benefit accruing to A, which is necessary to give validity to this promise, is the price agreed to be paid by B. The detriment suffered by B consists in the fact that he must pay the price for the cotton. Thus it will be seen that the benefit, in the nature of the price paid by B, comes from the promisee, and the detriment imposed is the obli-

gation to pay the price upon delivery of the bales of cotton. A promise in the eyes of the law is a detriment if it imposes legal responsibility upon the party making it. This doctrine of consideration is today applied to every contract, and may be said to form the foundation of our present law of contract.

The consideration may be either the doing of a present act, as, for example, the payment of a sum of money, or the promise to do a future act, such as a promise of marriage.

The consideration in a contract need not be commensurate with the benefit derived, a sufficient consideration existing if there has been some legal benefit enjoyed by one party and some legal detriment suffered by the other, however insignificant. The consideration must not, however, be so grossly inadequate to the benefit or detriment involved as to shock the conscience of a court of equity, in which event the consideration will be held invalid and the contract annulled. A agreed to loan B certain large boilers for the purpose of weighing them, B promising to return them to A in the same condition in which they were received. B takes the boilers apart in order to weigh them and returns them to A without putting them together. A brought suit against B for breach of contract, in that the boilers were not returned in good condition. B defended on the ground that there was no consideration for his promise to return them in proper condition. The court held that B must have received some benefit, otherwise he would not have taken the trouble of weighing the boilers, and furthermore that it was a detriment to A to part with their possession. The contract was decided to be a valid one and B was held liable for its breach. It should be borne in mind that the law will never attempt to rescue a man simply because he enters into a bad bargain. An illustration of this principle is furnished in the case of a man purchasing the patent rights of another. Suppose A agrees for a particular sum to purchase B's entire right, title and interest in and to certain letters patent, which turn out to be worthless in view of a subsequently discovered patent of a prior date. A, who obtained precisely what he bargained for, is bound by his contract, although the property in the patent was valueless. Hence it is always well to consider carefully a bargain before concluding it. A man by the exercise of a little forethought in these respects may avoid the otherwise disastrous consequences of contracts into which he may enter.

In connection with the subject of consideration it should also be noted that a consideration is void if based upon a promise to do an act impossible of performance.

Promises.

The existing liabilities of the contracting parties must also be taken into consideration in determining whether or not a *bona fide* benefit has been received by one party and a legal detriment suffered by the other. Thus, if a man is legally liable to do an act, a promise of its performance confers no legal benefit upon the party so entitled. For example, if I am indebted to you in the sum of $5,000, which I have neglected to pay, and I finally come to you and promise to pay the debt in full, provided you will loan me your yacht for the summer, which you agree to do, although in one sense of the word the prompt payment of my indebtedness is a consideration to you, your promise to loan me your yacht cannot be enforced on the ground that there was no consideration recognized by law to support it. Inasmuch as I was already legally liable to pay you the amount of my debt in full, you could receive no valid consideration upon my promise to pay the same if you would loan me your yacht.

Upon the same principle, the promise to perform a duty imposed by law constitutes no consideration to support a contract. If you are subpœnaed to appear in court as a witness in a case in which I am interested, a promise made by me to pay a certain sum of money to you if you will attend will be utterly void, because in attending you are but obeying the command of the subpœna and suffer no detriment in doing what you are legally bound to do. Similarly a contract not to do that which a man is by law forbidden to do, such as forging the signature of another, or committing an assault, is void.

Another important question arises in connection with the subject of consideration. It frequently happens that a man will promise to pay a part of his debt in consideration of a release of the whole. Will such a promise, if accepted, be binding? It will not for the reason that a promise to pay a part of a debt, for the whole of which you are liable, constitutes no consideration. The difficulty is avoided by a promise to pay something different than money or a small sum of money and certain other property of value. If A owes B $1,000 and promises to pay him $500, and also gives him a horse worth say $150 in settlement of the full amount of the bill, this promise would be good. The distinction consists in the fact that the value of the horse, watch fob or other chattel given, either in full payment, or in addition to the payment of a less sum of money than the amount due, is not readily determinable, and may, perchance, be of more value to the creditor than its actual market value. By this

means the rule that a promise to pay a less amount than is due is no consideration for the cancellation of the balance is circumvented.

Another important exception to the rule that a part payment is no consideration for the release of the entire debt exists in the case of an assignment for the benefit of creditors, where a number of creditors agree to accept a certain percentage of their entire debt in satisfaction of their claims. Upon what principle, it might be asked, can a number of creditors do that which an individual creditor cannot do? Apparently no better consideration exists for the release of the whole upon payment of part of an indebtedness, if owing to several, than if owing to an individual creditor. Nevertheless, the law holds that there is a sufficient consideration contained in the mutual promises of the several creditors between themselves, whereby they obtain that which they otherwise would not receive.

Suppose, however, that a dispute arises between two parties as to the amount of the debt. For example, A claims that B owes him $300, whereas B admits an indebtedness of only $200. The matter is finally compromised by B agreeing to pay A $250 in full satisfaction of the debt, which is accepted by A. Subsequently it is discovered that the exact amount of the debt was $300. The original agreement to compromise the dispute by the payment of $250 would in this case be binding, on the ground that the law favors the amicable adjustment of controversies and recognizes a valid consideration for the release of the balance of a debt where the same is disputed. The consideration consists in the expense and vexation saved by compromising the dispute which would be imposed upon the parties in case litigation was necessary.

Consideration, as we have learned, may be executed or executory; if the benefit accruing to one of the contracting parties consists of value which was given before the promise was made, there is no consideration; in other words, a past consideration subject to the exceptions hereinafter noted will not support a contract. To illustrate: If I should perform certain services, resulting in some benefit to you, assuming that it was suddenly necessary for me to do so to save or benefit your property or other interests, and you should subsequently promise to pay me a certain sum to compensate me for my labors, I would not be able to recover upon this promise because it was made after the consideration therefor, the performance of the service, was given. A better illustration is perhaps furnished in the case of a warrantee given after a contract is closed. A purchases a gold watch

from B and after paying for and receiving the same, A returns and asks B if it is warranted for a year, to which B replies in the affirmative. In the event of a defect in the watch within a year, A would not be entitled to recover upon the warrantee because it was made after the contract was closed. The consideration for the warrantee was past, which, as we have observed, will not support a contract, and it is therefore void.

It should be borne in mind, however, that a consideration, though past, conferred at the request of another, will support a subsequent promise. Suppose that A requests B to perform certain services for him, and after B has performed such services A promises to pay him one hundred dollars. Although the consideration in this illustration was past at the time the promise was made, the contract would nevertheless be binding. This exception to the general rule is made for the reason that it is manifestly unfair to excuse a man from a promise made in consideration of a past benefit conferred at his own particular request.

A promise is often made to pay a debt which has been rendered unenforceable by virtue of the Statute of Limitations. It is important to understand clearly the effect of such a promise. Consider, for example, that seven years after a debt has fallen due, I come to you requesting its payment. The Statute of Limitations in most states bars recovery of a debt after the expiration of six years from its date. However, recognizing a moral obligation to pay the debt, you promise to do so. This promise could be enforced in a suit at law, because the promise merely revives an old debt and consequently no new consideration is necessary, the old consideration reviving with the old debt. The object of the Statute of Limitations is to prevent the prosecution of stale claims, but if a promise is made to pay a debt outlawed by the statute, it will be collectable for six years from the date of the promise. An abstract of the Statutes of Limitation will be found at the end of this chapter.

Considerable doubt has been expressed as to whether or not a moral consideration will support a contract, but the weight of authority is to the effect that it will not. Thus a guardian who expends his own money to improve the property of his ward is clearly entitled upon every moral consideration to be repaid by the ward who has profited through his guardian's kindness. Nevertheless a promise by the ward upon reaching his majority to repay the guardian, being based wholly upon a moral consideration, will not be binding. Authorities in the various states are conflicting upon this principle.

Contracts in Writing.

In the above discussion we have found out that every simple contract must be supported by a consideration. There is a certain class of contracts which, in addition to the requirement of having a proper consideration, must be expressed in writing. The contracts required to be reduced to writing before any right of action can arise therefrom are regulated by the Statutes of Frauds and Perjuries. These statutes merely require that the contract expressed in writing shall set forth its terms with reasonable definiteness, the principal object, as indicated by the title of these statutes, being to prevent frauds and perjuries.

Among the contracts which must be expressed in writing are contracts for the sale of real estate, contracts for the leasing of real estate for any term exceeding three years, contracts creating a trust in lands, tenements and hereditaments, contracts of executors and administrators to answer for damages out of their own estate, and contracts to answer for the debt or default of another. Unless such contracts or memoranda thereof are reduced to writing and signed by the party to be charged therewith, or by a duly authorized agent, they cannot be enforced. Such contracts are not *per se* void, but are merely unenforceable in a court of law unless fulfilling the requirements of the statutes.

The Statutes of Frauds and Perjuries differ somewhat in the different states and interesting questions arise where contracts are made in one state and sought to be enforced in another, in which states the statutes differ. It is a general rule of law that the law of the place or jurisdiction within which a contract is made governs its validity. But suppose a contract is made in a state the law of which does not require the same to be reduced to writing. The parties subsequently remove to Pennsylvania, where a breach of the contract takes place. Can there be a recovery in this state where the law requires written evidence of the contract? The contract is valid according to the law of the state wherein it was made, but as the Statutes of Frauds and Perjuries do not operate to render any contract void, but merely regulate the manner in which contracts of a certain nature must be proven, recovery could not be had in Pennsylvania, in the absence of the requisite written evidence of the contract required to prove it according to the law of this state.

Reality of Consent.

We have now considered three elements which must necessarily enter into the formation of every valid contract, proper capacity of the parties, the existence of a definite offer and

acceptance, and the presence of either form or consideration. The next essential element to engage our attention is that of Reality of Consent. The agreement entered into may apparently include all the necessary requisites of a valid contract, nevertheless if the agreement is obtained by fraud or deceit, or if there is a mutual mistake of a material fact regarding the subject-matter of the contract, as, for instance, if the subject-matter of the contract was, unknown to either party, not in existence at the time the agreement was made, it is clear that no valid contract can under such circumstances exist.

The parties may have made a mistake regarding a material fact connected with their transaction, as above noted. Now, such a mistake must be distinguished from a mere error in judgment, as a mistake concerning the profits to be derived from the contract. Such a mistake, being altogether one of judgment, will not release the party from his obligations. A mistake to nullify a contract must be a mistake in a material fact. If I agree to purchase from you a certain lot of goods, which it subsequently develops had at the time of our agreement been destroyed by fire, of which fact we were both ignorant, no contract would be made, because the subject-matter thereof was not in existence at the time we entered into the agreement. This illustrates such a mistake of fact as would invalidate a contract.

Again, the mistake of fact may be made regarding the identity rather than the existence of the subject-matter of the contract. To cite an old illustration, John Doe sold Richard Roe a cargo of cotton to arrive on the ship *Peerless*, from Bombay. As a matter of fact there were two ships bearing the same name sailing from the same port. In making the agreement, John Doe had in mind one of these ships, while Richard Roe thought of the other. Under these circumstances no contract was made because there was an honest mistake of fact regarding the identity of the subject-matter.

Not only will a mistake as to the identity of the subject-matter invalidate a contract, but a mistake with reference to the identity of the contracting parties will also render the contract void. Suppose A agrees to furnish B with a certain amount of tea and coffee for a year. Before the expiration of the year, A sells out his business to C, who continues to furnish B with the above articles. B upon finding out that C is furnishing him with tea and coffee instead of A can repudiate any liability to carry out the contract, because, not having entered into any contract with C, and having entertained the idea that it was A who was furnishing him with the goods, he would not be compelled to pay C

for such tea and coffee as might have been delivered to him. A should, however, return the coffee or pay the price.

It sometimes happens that a man mistakes the character of a contract entered into by him. If a paper is signed with the understanding that it is a release, when in reality it is a promissory note, the party signing such a document would not be bound thereby because a mistake existed as to its character. If, however, a question arose as to which of the two innocent parties should suffer the loss due to such a mistake, the burden would fall on the party executing the instrument on account of his negligence in not reading the paper carefully and informing himself of its contents.

Mistake of a material fact, as we have seen, renders a contract void. There are, however, certain other forms of unreality of consent which, although not invalidating a contract, nevertheless furnish one of the parties an opportunity to avoid the consequences of the contract. Such unreality of consent may result either from a misrepresentation or a fraud. As it is very important to have a clear conception of the distinction between misrepresentation and fraud, let us consider carefully what constitutes each, and what effect the presence of each has upon a contract.

In its legal signification, misrepresentation does not necessarily imply wilful falsehood, but must be understood to be the result of a misstatement of fact innocently made by one of the contracting parties to the other. For example, if I sell you a watch which I honestly believe to be eighteen karat gold, but which, as a matter of fact, is a very inferior article, I am guilty of a misstatement of fact innocently made. Such a misrepresentation would give the right to the injured party to rescind the contract.

It is sometimes difficult to determine whether or not the misrepresentation forms an integral part of the contract or is merely collateral to it. In the former instance the validity of the contract would and in the latter instance it would not be affected. If a dealer in diamonds sells a customer a diamond which he honestly believes to be a stone of the first water, but which in reality is only glass, the misrepresentation obviously forms part of the contract, *i. e.*, is an integral part thereof. But if a valuable horse is sold with the representation that the left hind foot is white, whereas it is the right foot that is white, this misrepresentation would not form part of the contract and hence would not affect its validity.

Representations forming part of the contract must, moreover, be distinguished from warranties which are agreements

collateral to the contract. If an article is sold represented to be of a certain quality with the proviso that if it is not of the quality represented the contract may be rescinded, the representation as to quality is an essential element of the contract and not a warranty. If, on the other hand, an article is sold warranted to be of a certain quality, but no provision is made providing that in case it is not the contract may be rescinded, the sale cannot be repudiated even though the article be very much inferior in quality. An action would, of course, lie to recover damages for the breach of the warranty and the measure of damages would be the difference between the actual value of the article and the value of the article as it was represented to be. Misrepresentation in the contract gives a right to rescind; but the breach of a warranty gives the right to sue for damages. Remedies are provided for breach of warranty by statute, uniform in a majority of the States.

It is frequently provided in a contract that its conditions must be performed within a limited time. When such a condition forms part of the contract, *i. e.*, when time is of the essence of the contract, its breach confers upon the injured party the right to rescind it; when a time stipulation is collateral to the contract, a failure to perform the contract within the time limited merely gives rise to an action for damages, covering the loss incident to the delay, but the contract is nevertheless enforceable.

Time is not of the essence of a contract, unless made so by the express stipulation of the parties or unless it is to be implied from the nature of the subject-matter that the parties so contemplated it; no such implication will ordinarily be made as to contracts for the payment of money, or the conveyance of land, or in any case where the damage caused by a breach with regard to the time of delivery can be compensated for in money.

A very usual form of misrepresentation arises as a result of a man's over-anxiety to dispose of his goods. It is very natural for one to employ commendatory phrases and to exaggerate the value of his wares, but a mere extravagant description is not necessarily a misrepresentation such as would affect the contract. A in selling a hotel to B stated that it was leased at the time by a good tenant. As a matter of fact, the tenant was a very poor one, not having paid his rent for a considerable time past. The court declared that a "good tenant" meant one who paid his rent promptly and regularly, and hence the representation that the tenant in possession of the hotel was a good tenant being false, the contract was annulled. Ordinarily

a man is presumed to deal with another at arm's length and should not rely explicitly upon representations. The doctrine of *caveat emptor*, "let the purchaser beware," implies a duty on the purchaser of goods or merchandise of any kind to exercise his own judgment and means of information. A purchaser deceived in the value or quality of goods he had the opportunity of inspecting cannot recover in the absence of false statements wilfully made by the vendor of said goods. An expression of opinion, however erroneous, must be distinguished from a positive statement of fact, and will not give rise to a cause of action.

We have seen that a contract may be set aside if a misrepresentation is made of a material fact. There are a certain class of contracts which is governed by a failure to disclose a material fact. In this connection contracts of life and fire insurance are illustrations. It is well known that a failure on the part of the insured to state fully all facts which, if known, would affect the risk taken will defeat the right of the insured to recover.

Suppose the misrepresentation of a material fact instead of being innocently made was made with the express purpose of deceiving? It would then constitute what is known as fraud. There are five elements necessary to render a statement fraudulent in the eyes of the law. It must be (1) a false statement, (2) of a material fact, (3) made with a knowledge of its falsity or with a reckless disregard of its truth; (4) it must be acted upon by the party to whom it is made, (5) who must suffer loss thereby.

The representation to constitute fraud must in point of fact be false, and it must be a statement of fact as distinguished from an expression of opinion or judgment. The false statement of a material fact must, to be fraudulent, have been made with the intention of deceiving. The deception practiced may not have been intended to injure the party who suffers thereby, but, nevertheless, if the false statement was intended to deceive, liability rests upon the party making it to whosoever is affected thereby. I sell to you a rifle which I represent as thoroughly safe and made by a reputable house. Both of these statements I know to be false. You purchase the rifle and give it to your son, who is injured in using it. I claim in a suit brought to recover damages that, inasmuch as I did not make the false statements to your son, but to you, I am not liable for your son's injuries. This argument would not prevail, the law holding that I am liable not only to you, but also to your son or whosoever was injured as a result of my deception or fraud.

The most difficult question to determine is not whether the statement of a material fact was false, but whether or not it was known to be false by the party making it. The knowledge of falsity is the essence of fraud. Sometimes, however, a statement is made by a party who perhaps does not know it to be false, but who, notwithstanding, makes the statement with a reckless disregard of its truth. Now, it is quite plain that a man has no right wilfully to assert as a fact that of which he is in entire ignorance. Such reckless assertions should render the party making them responsible in both morals and law to whosoever is prejudiced thereby.

The rules above stated in regard to the truthfulness of representations should be particularly observed in the publication of prospectuses of proposed companies or corporations. The utmost candor and honesty should characterize every statement contained in a prospectus. A failure on the part of a promoter of a corporation to state everything with accuracy and care will vitiate a contract.

Practically every state in the Union has provided by statute that if any officer, employee or agent of a corporation shall make or publish any statement of account which he knows to be false, with intent to defraud any stockholder or induce anyone to become a stockholder or to advance money to the company, he is guilty of a misdemeanor punishable by fine and imprisonment.

No fraud exists unless the false representation was acted upon by the other party. The reliance upon the fraud must also result in some injury or prejudice to the party relying thereon.

Having determined what constitutes fraud, let us next inquire into the effect of fraud upon a contract.

The existence of fraud in a contract does not necessarily render the same void. Fraud will render an executory contract voidable at the option of the injured party. He may carry out the contract and sue for the loss sustained as a result of the fraud, or he may repudiate the entire contract and sue for damages covering his losses. It is necessary for the injured party promptly to notify the other party of his determination after discovery of the fraud, otherwise the contract will be deemed to have been ratified. If he decide to rescind the contract he may sue to recover that with which he parted under the contract. Proof of fraud will also constitute a good defense to either an action at law or in equity for specific performance. The injured party may also recover what is known as punitive damages, which are awarded not only to compensate him for his losses, but to punish the party guilty of the fraud.

Duress and Undue Influence.

The last two forms of unreality of consent which we will consider are duress and undue influence.

In order to compel the execution of a contract, violence, either actual or threatened, is sometimes offered to a man or a member of his immediate family. This is what is known as duress, and in such a case the consent given is unreal, the will being overpowered by fear of injury. A contract so entered into may be avoided at the option of the injured party. Duress is of three kinds: (1) Duress of imprisonment; (2) duress *per minas*, where personal injuries or imprisonment is threatened in order to force a party to enter into a contract; and (3) duress of goods, being a case where one has in his possession or control goods of another and threatens to exercise his control over said goods to the prejudice of the other party, which threat is made for the purpose of compelling the other party to enter into a contract. Any agreement made under such a threat can be avoided.

Similarly when undue influence is exercised upon a man to induce him to execute or enter into a contract, he may be forced to do that which his better judgment disapproves. Undue influence is usually exercised upon old or feeble-minded people, upon orphans, minors and certain other classes of people who occupy a confidential relation with the party exercising the undue influence. There is also a presumption of undue influence when one takes advantage of another's necessities and distress, as, for example, usurious interest charged for loans. Undue influence occurs more frequently in the case of wills than in contracts. The presence of undue influence in a contract will invalidate it.

The party seeking to set aside a contract on the ground of undue influence has the burden of proving the same. In certain cases, however, the burden of rebutting the presumption of undue influence rests upon the party benefiting by the contract, in view of the relationship existing between the parties. If a son sold his father a very valuable piece of ground for an inadequate consideration, the burden would be on the father to prove that he did not exercise undue influence upon his son. All parties standing in *locus parentis* or in a fiduciary capacity must prove that no undue influence was exerted to obtain any advantage from those to whom they stand in such relationship.

Legality of Object.

We have now brought two parties with legal capacity to enter into a contract together; an expression of their intention has been made in the proper manner by a definite offer and

acceptance; said offer and acceptance may involve a valid consideration or may be set forth in writing under seal: furthermore the consent of the parties may be real, *i. e.*, free from mistake, misrepresentation, fraud, duress or undue influence; nevertheless the contract, although involving all of the above essential elements, will be void if the objects sought by the contract to be accomplished are illegal. Such illegality will arise if the object contemplated by the contract is forbidden by statute, if it is contrary to the common law, or if it is opposed to general public policy.

An act of congress or of a state legislature may provide that a certain class of contracts are void, or perhaps such statute may merely provide that a penalty be imposed upon all persons who enter into a contract of a certain character. In the latter instance the contract is not void, but if the statute specially declares that the objects of certain contracts were illegal, the contract would be absolutely void and no rights would be acquired thereunder.

A very common class of contracts declared by statute to be void are wagering contracts. By acts of assembly money lost on a horse race or other game of hazard or upon an election result cannot be recovered. The statutes of most states also prohibit the performance of worldly business on Sunday. Any contract made on the Sabbath Day, if it remains executory, is void. The exceptions to this rule are contracts of necessity and contracts of charity.

The statutes of most states provide that it is unlawful for a man to act as a real estate or merchandise broker without having first obtained a license. The cashier of a state bank is prohibited by law from engaging in any other business.

If a contract having a specified object is forbidden by law, any contract collateral thereto is likewise invalid. If a promissory note is given in settlement of a bet, this note is itself invalid because wagering contracts are forbidden and the consideration thereof is illegal.

If the object of a contract is contrary to any rule of common law it is invalid. Thus contracts to commit a civil wrong or a crime are absolutely void.

Any contract whose object contravenes any rule of public policy is also void. Any act the performance of which is deemed to be detrimental to the general public welfare is opposed to general public policy and, therefore, void. To illustrate, any contract whose object it is to defeat justice, to promote litigation, to restrain marriage or trade are void because opposed to public policy.

The policy of the law has always been to encourage marriage, and consequently any contract in restraint thereof will not be recognized.

It is also the policy of the law to promote trade, and consequently any agreement which unreasonably restrains a person from exercising his trade or business is void. A common example of such an agreement is where a business man disposes of his business to a competitor, and in consideration of the price paid for doing so agrees not to engage in the same business again. Obviously this agreement is in restraint of trade and, therefore, void. The courts will, however, sustain a contract not to engage in a particular trade or business within a specified territory for a limited period of time, partial restraints being unobjectionable. Total restraint of trade, or what practically amounts to the same thing, cannot be enforced.

It should also be noted in this regard that the law forbids the formation of monopolies and trusts whose purpose it is to control or enhance the price of necessary commodities by preventing competition in the sale thereof, or by withholding them from the market. Such an object is opposed to public policy, in that it is in restraint of trade, and any contract or agreement embodying such an object is invalid.

It sometimes happens that the illegal character of the contract is not apparent, one of the parties being entirely ignorant thereof. For example, I may enter into an agreement with you to lease a house which I intend to convert into a speakeasy. If you are innocent of my intention you could hold me to my contract, providing there was nothing to indicate the illegality of the contract on its face. If, however, you were aware of my illegal object the contract would be void, being tainted by an illegal object.

The effect of illegality upon contracts varies according to circumstances. The general rule is that where part only of a contract is illegal, the part which is legal can be enforced if it can be separated from the illegal part. If, however, the contract is indivisible it is void *in toto*.

Operation of Contract.

Having pointed out the manner in which a valid contract may be created, the next inquiry to engage our attention is upon whom does such a contract confer rights and liabilities, and can such rights and liabilities be assigned or pass to others than the original parties to the contract?

The party to a contract who gives the consideration should

enjoy the benefit, and the party who makes a promise should be obliged to keep it. It may be stated as a general rule that a contract cannot impose an obligation or confer a right upon any person not a party to the same. Thus if A should contract with B to pay C a certain sum of money, this contract would not confer any rights upon C. There are, however, certain well-recognized exceptions to the rule above stated. If a contract between two parties establishes a trust for the benefit of a third party, said third party can bring suit against the promisor and have the contract carried out.

Suppose A and B are partners in business. B retires from the firm and turns the assets over to A, who promises to assume all liabilities of the firm. Upon this promise made by A to B, X, a creditor of the firm, could sue in his own name and recover a debt owing by the firm to him. The decisions are not, however, entirely uniform in this regard.

When a contract has been made between two or more parties, there is a duty imposed upon outside parties not to interfere with the contractual relation so established. This rule applies more particularly to contracts of employment, a man being liable in damages who maliciously induces the employee of another to break his contract of employment.

Under certain circumstances, however, third parties may take the place of the original parties to the contract, such substitution being effected by an assignment. An assignment of a contract may be accomplished in two ways (1) by act of the parties and (2) by operation of law.

A man cannot assign his liabilities to a contract, his power of assignment being limited to his rights thereunder.

Contractual rights may be assigned under three conditions, (1) the assignee must give a consideration; (2) the person liable for the debt or the performance of any act under a contract must be notified of the assignment; and (3) the assignee in acquiring rights under the contract takes subject to such defenses as may exist against the assignor.

The assignment may be either verbal or written, the form being immaterial, except in cases coming under the provisions of the Statutes of Frauds. Notice of the assignment may be given in any manner, it merely being required that knowledge of the assignment be brought to the attention of the party liable under the contract.

Where an assignment takes place by operation of law, both rights and liabilities arising out of a contract may be transferred. To illustrate this principle, consider a contract between A and B

whereby A is to construct a building for B. When the work is half completed B dies. Will A be compelled to carry out his contract by completing the building? The rights of B pass by operation of law either to his executors or administrators, and A could be compelled by B's representatives to perform his contract. Rights under a contract are personal property and pass by operation of law to a man's personal representatives. Likewise the liabilities on contracts into which a decedent may have entered are imposed upon his executors or administrators by operation of law.

In the case of bankruptcy, all rights under any contracts in which the bankrupt was a party, pass by law to the trustee in bankruptcy, the bankrupt having surrendered his property into court to be distributed among his creditors, and by so doing is subsequently discharged from all liabilities therefor.

There are, moreover, certain contracts for the sale of real estate, which contracts by operation of law become binding upon parties not involved in the original contracts. Such is the case with contracts containing covenants which are said to "run with the land." This class of contracts will be considered more in detail in our discussion of the law of real estate.

It should be carefully noted that all contracts calling for a personal relation between the parties cannot be assigned. This applies more particularly to contracts for personal services, in which confidence, trust or a high degree of skill is required. A man has a right to the benefit he contemplates from the character, credit and substance of the person with whom he contracts, and hence such contracts cannot be assigned.

Any contract, the breach of which invokes only personal injuries, not affecting the value of property, is unassignable, either by the act of the parties or operation of law, as for example a contract of marriage.

The assignability of negotiable instruments forms an exception to the above enumerated rules, and will be considered hereafter.

Interpretation.

Having ascertained the manner in which a contract may be created and the parties that may be affected thereby, we will now consider the rules governing the interpretation of contracts. The object of the law in construing a contract is to determine the intention of the parties. Let us assume that the terms of the contract have been clearly proven, but that a dispute has arisen regarding the meaning of the terms used. Upon what basis will the law proceed to interpret the contract?

In the first place, the object aimed at in interpreting a contract is to arrive at the intention of the parties by a consideration of the whole agreement. Every part of a contract should harmonize with every other part, but where one clause is repugnant to another the prior clause will be accepted and the latter clause rejected. Similarly where part of a contract is in writing and part printed, the terms of which are inconsistent, the written part will prevail in preference to the printed part.

The words contained in an agreement will always be given their plain and literal meaning. A man will not be heard to deny that he meant what his words clearly imply. If words used by a party in a contract have a legal significance of which he is ignorant this is a misfortune, but affords no excuse for construing words in any other sense than what is plain, literal and obvious. The meaning of words must be that which is understood by the mass of mankind. If technical words are employed they will be given the meaning ascribed to them in the trade, art, business or profession to which they appertain. A contract made in a locality wherein a particular usage or custom prevails will be governed thereby.

In analyzing the intention of the parties to a contract, all the circumstances leading up to its formation will also be considered. Thus the subject-matter of the contract, the consideration therefor, the object sought to be affected thereby and all the surrounding circumstances will be inquired into in order to find out what the intention of the parties really was.

Words are always construed most strongly against the party using them; that is when opportunity is given for latitude of construction, words will be construed most strictly against the party employing them. For example, in an insurance policy, words are construed most strongly against the insurance company; in a deed against the grantor, etc.

In view of the fallibility of human nature, it is always the part of prudence to reduce contracts of any importance to writing and be sure to embody every essential detail into the written contract. Trust nothing to memory. These recommendations should be carefully observed in view of the fact that it is a well-established rule of evidence that no oral evidence will be received to vary or contradict the terms of a written contract. When a person has taken the precaution to reduce a contract to writing, it is presumed he has carefully considered the entire agreement, and consequently he will not be allowed to abrogate the effect of a written contract by setting forth an oral agreement inconsistent with the terms of the written agreement.

The above stated rule, although a most salutary one in many regards, would, under certain circumstances, operate harshly. Hence certain exceptions have been made which it will now be our purpose to briefly outline.

Assume that a contract has been made, properly reduced to writing and executed, but which was obtained through duress, or was the result of fraud or misrepresentation. It would surely be a hardship to prevent oral evidence to establish the invalidity of such a contract. Hence oral evidence may always be produced to prove the illegality of a written agreement.

Although the terms of a written contract cannot be contradicted by oral evidence, it is permissible to offer oral testimony to determine the meaning of peculiar or technical terms contained in the contract. This is frequently necessary in admiralty cases to construe nautical words and phrases, which may be done through the introduction of oral evidence.

After executing a written contract the parties may subsequently desire to alter or modify the same. If the original contract was obliged to be under seal or written by virtue of the Statutes of Frauds and Perjuries, the alteration must also be under seal or written. But if a contract has been reduced to writing in the absence of any legal necessity, oral evidence will be received to prove any subsequent oral agreement altering or modifying the terms of the original written agreement. It would, as a matter of protection, be well to always include in a written contract the manner in which it may be subsequently changed, if so desired.

In connection with the rules applicable to the interpretation of contracts, the importance of the distinction between a penalty and liquidated damages cannot be overestimated. The observance of this distinction further indicates the object of the court to definitely ascertain the intention of the parties.

It is usual, especially in building contracts, to provide for the payment of a fixed sum of money by the party guilty of a breach of the contract. The question that presents itself is whether such a sum was intended as a penalty or liquidated damages. Suppose A agrees to construct a power house for the B Company, the work to be completed by July 1, 1930. The contract provides that A shall pay to the B Company the sum of two hundred and fifty dollars per day for every day the operation remains uncompleted after July 1, 1930. Now, the important fact to determine is whether the two hundred and fifty dollars is to be regarded as a penalty for A's failure to finish the work within the stipulated time, or whether said sum of two hundred

and fifty dollars is to represent the damages sustained by B on account of the delay. If the amount is construed to be a penalty, the court would not permit B to recover the same, B only being able to recover his actual loss. If, however, the two hundred and fifty dollars is to be regarded as liquidated damages, B could recover the entire amount regardless of the extent of his actual losses. It is immaterial whether the parties refer to the amount to be paid in case of default in performance of the contract as a penalty or liquidated damages, the court will consider the entire agreement and determine whether such sum is to be treated as a penalty or liquidated damages. The parties by saying so cannot convert what in reality is a penalty into liquidated damages.

To arrive at the proper conclusion, the following rule has been adopted: If the amount of money stipulated to be paid upon a breach of the contract is to compensate for a loss which is uncertain in amount and impossible of definite ascertainment at the time the contract is made, the sum to be paid in default of performance of the contract is to be regarded as liquidated damages. If the amount stipulated to be paid is understood to be compensation for a loss that can be definitely ascertained in advance, and the amount recoverable exceeds the actual loss, then such sum is to be regarded as a penalty. Care should be exercised in the wording of a contract to make certain the amount recoverable in the event of a breach is liquidated damages, it being remembered that the law is opposed to the enforcement of a penalty.

Discharge of Contract.

Having indicated how a contract may be formed, the parties whom it affects, and the rules regulating the interpretation thereof, the last question to be considered is: How may the contractual relation be discharged?

Inasmuch as two or more individuals may by agreement assume certain obligations, they may also by agreement release themselves from such obligations.

An agreement discharging a contract may be in the nature of a waiver; it may be by the substitution of a new contract for the old one; or there may be an express provision in the contract itself providing for its discharge.

A waiver is an express agreement that the contract shall not be longer obligatory upon either party. As in the case of any other agreement, a waiver requires a consideration. Where a contract remains executory, that is, where neither party has performed his part, it may be waived by mutual consent. In

such a case the abandonment by each party of his right to a performance by the other is a sufficient consideration for the contract of waiver. An executed contract cannot be discharged in the absence of consideration except by a release under seal.

A sealed contract or a written contract may be discharged by an oral contract, providing there is a consideration therefor. Although it is not necessary for a contract to be discharged in the same form as that in which it was made, yet prudence would dictate that such a practice be adopted.

Discharge by Substituted Contract.

A new contract may be substituted for an old contract either wholly or partly different therefrom. The substituted contract may result either from an express agreement abrogating the old contract in whole or in part, or it may result by implication, where the terms of the new agreement are inconsistent with the old contract.

A contract may, furthermore, be discharged by the substitution of a new party for one of the parties to the original agreement. This substitution of a new party is what is known as a novation. If A and B are the contracting parties, and agree that C shall take the place of B, this operates as a novation, and B is released or discharged from all further liability on account of his original contract with A, C assuming the same. This principle is frequently illustrated in the case of a retiring partner from a firm. If a creditor is notified of the retirement of a partner from a company, and either expressly agrees to release him or continues dealing with the firm upon the old basis, the retiring partner is discharged from liability, the creditor looking to the continuing partners for the performance of all contracts and the meeting of any indebtedness.

It sometimes happens that a contract is discharged by the happening of certain conditions. For example, if a contract of service provides that either party may terminate it by one month's notice to the other, an exercise of this option by either party will, of course, discharge the contract.

When both parties have done all they are required to do under the contract the contract is discharged by performance. A performance must be in accordance with the terms and conditions of the contract, but the law will not hold a man to the strictest performance, but is satisfied by a substantial performance. A performance is substantial which conforms with the ascertained intention of the parties to the contract. Thus a provision that a builder shall use "the best French plate double-thick glass, similar

to that used in a certain other building," only requires the builder to use a fair sample of the quality of glass specified, and not that each plate should be the best specimen of its kind.

One of the parties to the contract may be perfectly willing to carry out his agreement, and may make a tender of performance to the other party which is not accepted. If I tender you $500 which I owe you under a contract, and you refuse to accept the same, I am not excused from paying you the amount I owe, but upon proof that I have made you a tender I am relieved from the obligation of paying the costs of a suit, interest on the debt or damages for non-performance. To be valid a tender must be of the entire amount due and must be unconditional.

If instead of a party making payment of money, suppose a promissory note is given for the amount due; the discharge is only conditional upon the note being paid at maturity. If the note goes to protest, the original contract revives and can be sued upon and the note disregarded.

Discharge by Breach.

If one of the parties to a contract fails to perform that which he is bound to perform thereunder, such default constitutes a breach of the contract on his part. Such a breach does not necessarily discharge a contract, although under certain circumstances hereafter to be considered it may. It will, however, always give to the other party a right to recover damages for such injuries as he may have sustained by virtue of the breach.

In the event of a breach, the question arises whether or not it affects an integral part or term of the contract or whether it merely relates to a collateral agreement or warrantee. The distinction between a representation which is an integral part of the contract and one that is collateral thereto has been emphasized heretofore. In the former case, failure to perform the agreement will discharge the contract so as to absolve the other party from all liability on his part. In the latter case, such a failure may give rise to an action for damages, but will not discharge the contract. Similarly the breach of an integral part of a contract, affecting the substance thereof, will discharge the same; a breach of a collateral part of the contract will only give rise to an action for damages.

A breach of a contract may affect either the whole or only a part of it. In contracts comprising a number of separate agreements it is necessary to ascertain whether a breach of one of the agreements will destroy the entire contract or only that part which it directly affects.

Suppose A and B enter into a contract whereby A agrees to furnish B 600 tons of coal, 200 tons to be delivered in the months of April, May and June, respectively. The April shipment is short some 120 tons. B immediately considers the default as a breach of the contract. It cannot be denied that A was guilty of a breach of the contract, but the contract was clearly a divisible one, and if A fulfilled his contract by making delivery of the required number of tons in May and June, B could only recover damages resultant upon the default in the April shipment. The question to be determined in such cases is "What is the substance of the contract?" The mere fact that deliveries are to be made at different times is not of itself sufficient to conclude that failure of delivery in one instance discharges the contract. It simply gives a remedy in the nature of an action for damages. We must endeavor to find out the real intention of the parties, and if the parties intended that a series of separate agreements should constitute a single contract, then a breach of one will destroy the whole, otherwise the rule will be as in the illustration given above. In connection with divisible contracts the decisions are very close and the circumstances of each case must be carefully considered.

A breach of a contract may occur by an express renunciation by one of the parties thereto. If I agree to furnish you with a certain number of railway chairs and after delivering part you decline to accept any more, by renouncing your part of the contract you are guilty of a breach. It is not necessary for me to complete the manufacture of the balance of the order and tender delivery to you, but I may immediately sue you for damages on account of your renunciation. The contract is regarded as at an end, and my right of action exists whether the renunciation was made before or after the time when the contract was to have been performed.

The promisee has an inchoate right to a performance of the contract which becomes complete when the time for performance arrives, and in the meantime has a right to have the contract kept open as a subsisting and effective agreement, and the promisee can in all cases treat a renunciation before the time of performance arrives as a breach of the contract. Two principles must be borne in mind in applying this rule: The repudiation of the contract must be absolute and the other party thereto must elect to consider it as a discharge of the entire obligation. A contracts to furnish B with certain steel rails on November 1st, a further amount on December 15th and the balance on January 1st. He ships the amount due on November 1st, but on Decem-

ber 10th writes B that he will not be able to make delivery of the amount that was due on December 15th. On December 25th B writes to A that he is willing to accept the amount that was due on December 15th. In a suit brought by A against B to recover the price of the rails which were shipped on November 1st, B endeavored to set off damages for breach on A's part in not making the delivery on December 15th. The court refused to allow this set-off on the ground that B acquiesced in the renunciation, as was evidenced by his communication to A under date of December 25th.

Breach Arising from Impossibility of Performance.

A contract may be discharged not only by a formal refusal by one of the parties to carry out his part, but also if one of the parties renders the performance of the contract impossible by his own act. This will operate as a complete breach if done either before or after the time for performance arrives. To illustrate this principle, suppose A, an insurance agent, contracts to represent the B Insurance Company for the period of three years. The company, however, voluntarily winds up its business at the end of one year. A would be entitled to bring suit at the end of one year and recover his salary for the full period of three years.

In the earlier discussion of this subject, it was pointed out that if there were any conditions which rendered performance of the contract impossible, existing at the time the contract was made, as in the event of the subject-matter being destroyed by fire, which fact was unknown to the parties, the contract would be void, or rather there never would have been a valid contract. We will now consider how a contract may be discharged by impossibility of performance arising after the contract is made. If it has become impossible for a man to perform his contract, the courts cannot, of course, compel specific performance, but the defaulting party will, nevertheless, be liable in damages. To protect himself a man, in making a contract, should always introduce such stipulations as will relieve him of liability upon the happening of conditions which would render the contract impossible of performance. Thus, if I should contract to deliver to you a cargo of goods by a certain date, but am prevented from doing so on account of a violent storm, or the happening of other conditions beyond my control, I would not be able on such account to avoid responsibility, no matter how manifestly beyond my power were the conditions preventing the performance. Had I specified in the contract "Storms excepted," I would have been relieved from liability. A man should always stipulate in a contract that

he will not be liable in case of acts of God, strikes or circumstances beyond his control.

Under certain circumstances, subsequent impossibility of performance will discharge liability under the contract in the absence of express exception. If, for example, subsequent to the date of a contract, the laws of the locality wherein it was made change, making it illegal to perform the same, liability thereunder would be discharged on the ground of impossibility of performance.

Furthermore, in contracts for personal services, death or incapacitating illness operates as a complete discharge.

By Operation of Law.

Contracts may also be discharged by operation of law. When a man becomes a bankrupt, under the Federal statutes relating thereto, upon complying with the requirements of the law, he is thereupon discharged from all liability on account of all former contracts to which he may have been a party. His debts and obligations are discharged by operation of law.

Merger.

If a contract is made under seal, covering in general the terms and conditions of an oral contract previously made, the simple contract is discharged, it being merged into the sealed contract. A contract of less solemnity is always merged into one of greater solemnity, where the same involves the same parties and subject-matter.

If one party intentionally alters a material part of a written contract without the knowledge or consent of the other party, the party prejudiced on this account is discharged from all liability under the contract.

Remedies upon a Breach of Contract.

When a breach of contract has occurred in any of the ways heretofore mentioned, the injured party is given certain rights. In a court of law he may recover damages to compensate him for such losses as resulted to him on account of the breach. It is obvious, however, that under certain circumstances such damages as might be recovered in a court of law would be wholly inadequate to the injury suffered. A court of equity will, when the remedy at law is incomplete, compel a specific performance of the contract and grant such further redress as complete justice requires. Specific performance is decreed by a court of equity most frequently in the case of contracts for the sale of real estate, upon breach of which damages ordinarily would be insufficient. Contracts covering building operations, the construction of rail-

roads, etc., will not be specifically enforced, because to do so would necessitate the exercise of supervisory powers which a court of equity will not assume.

We see, therefore, that when a breach of a contract occurs a right of action arises, either for damages or specific performance. How, we next ask, can this right of action be discharged?

The liability which has arisen from the breach of contract may be discharged in three ways: (1) By agreement of the parties; (2) by judgment of a court of competent jurisdiction, and (3) by lapse of time.

Any party injured by the breach of a contract may release the party guilty of the breach from such rights of action as he may have against him. Such a discharge may be effected by a release or by an accord and satisfaction.

A release from liability for damages is ordinarily made under seal, otherwise it would be a promise without a consideration. If the release is not under seal, a consideration must be present to support it. No particular form is necessary for a release. A covenant not to sue for an indefinite time has been held to be a good release. A release of one of several joint debtors is a release of all, for the reason that where one has been released, the remaining debtor or debtors cannot be jointly liable, and it was only a joint liability that they assumed.

By agreement of the parties, a right of action accruing to one may be discharged by what is known as an accord and satisfaction. To be a valid release the benefit or consideration to be received must be of legal value, to the right of which the creditor was not before entitled and must be executed. An agreement to take property in payment of a debt and the acceptance thereof by the creditor pursuant to such agreement is such accord and satisfaction as constitutes a good defense to an action on the debt. To effect a valid accord and satisfaction there must not only be a clear agreement or accord, but the agreement must be executed by acceptance of the matter agreed upon in satisfaction.

If a creditor consents to accept merchandise in satisfaction of his claim, and the debtor has the goods ready at the time and place agreed upon, this is a sufficient defense to a subsequent action for the debt. Any new interest or right acquired by the creditor by virtue of an agreement of accord and satisfaction is sufficient to discharge the right of action if received in satisfaction.

Discharge by Judgment.

A second manner in which a right of action arising out of a breach of contract may be discharged is by a judgment. When

suit is brought and a judgment recovered, unless reversed by an appellate court, the right of action becomes merged in the judgment and is discharged thereby.

Discharge by Lapse of Time.

Lastly, a right of action may be lost by lapse of time.

In every state laws exist, slightly varying, known as the Statutes of Limitation, which limit the time within which suit must be brought. All rights of action arising out of contracts must be sued upon within six years after the right accrues, otherwise the right is lost. If it is impossible to bring suit within the required period of time, by virtue of some disability appertaining to the party in whose favor the right of action exists, such as infancy, temporary insanity, imprisonment, absence beyond the seas and coverture in certain cases, the statute does not commence to run until the removal of such disabilities. In the case of a minor it would not begin to run until he had attained his majority; in the case of an insane person, the statute would run from the time he recovered his reason; in the case of a person absent abroad, it would run from the time the party returned.

Summary as to Contracts.

In summary, a contract is an agreement made between two or more persons, which, to be valid and enforceable, must comprise a definite offer made by one party and accepted by the other, for which a consideration must be given, or which must be expressed in such a form as to imply consideration, such as an agreement under seal.

Furthermore, the parties must have legal capacity to enter into a contract, and the agreement between them must be free from fraud, accident or mistake, or duress or undue influence.

If the contract contemplates an object which is illegal, in that it is contrary to statute law, the common law or public policy, the same is void.

If a contract embodies the above requirements it operates to bind the parties thereto to the terms and conditions thereof. Rights thereunder may under certain circumstances be assigned to third parties, either by act of the parties or by operation of law. As a general rule, liabilities under a contract cannot be assigned.

A contract is interpreted according to the plain and obvious meaning of its terms; when technical words are employed they

are interpreted according to their meaning in the art or science to which they appertain. In interpreting a contract evidence will be received to establish a particular custom or usage existing in the locality within which the contract was made.

A contract when made may be discharged by performance of its conditions by both parties, by waiver of such performance, by breach of its terms, by merger and by operation of law.

When a contract is discharged by breach the injured party may either sue for the damages suffered by virtue thereof, or may compel the defaulting party to specifically perform his contract by the decree of a court of equity.

The party liable for the breach of a contract may be relieved from such liability by agreement of the parties, by judgment of a court of law, or by lapse of time, *i. e.*, the operation of the Statutes of Limitations.

It is hoped that the reader has clearly grasped the principles involved in the Law of Contracts, as outlined, which will enable him to more profitably study the following subjects to be considered.

It is essential to every credit man to have available the laws of all the states regulating the property rights of married women, the exemptions allowed debtors in the various jurisdictions, together with the statutes fixing the time within which suit must be brought. Abstracts of the laws of all the states are appended hereto, together with some general observations as to the collection of debts and proof of claims. It will be more appropriate to attach forms to the specific sub-divisions in the general law of contract to which they are applicable which we will discuss hereafter.

Proof of Claims

Persons who reside out of the state, sending claims to a foreign state for collection, should send full particulars of the names and residences of the parties. Non-resident plaintiffs, by rule of court, may be required to enter security for costs, if demanded within a reasonable time after suit brought, but the amount usually required is not large. Book debts for goods or services may be proved by the production of the book of original entries, supported by oath of the person who made them, or, if he be absent and cannot be produced, by proof of his handwriting. Disputed claims must be proved by competent evidence, either written evidence or the testimony of witnesses present at the trial or audit, or upon depositions taken under rules of court on notice to opposite party.

Judgment obtained in any other state of the Union is *prima facie* evidence of debt when action is brought upon it, if the record shows that the defendant was duly served with process, or appeared in the action, and this fact is proved to the jury by a copy of the record duly certified according to act of congress. In a suit on such a judgment, or on a judgment in a foreign country, the plaintiff may have judgment for want of an affidavit of defense, or upon filing a statement of claim. This statement need not set out the entire record on which judgment was obtained, though it is thought better practice to do so.

Claims for Collection.

(*Instructions to forwarders.*) Enclose itemized statement of the claim and state whether forwarder is a firm or corporation, and if a firm, give names of partners, and a trade name, if any. If the claim is for goods sold, state whether you desire to affirm the sale and sue for the purchase price, or rescind the sale and try to get your goods back. You cannot do both. If sale of goods was procured by false and fraudulent representation as to credits, etc., upon which vendor relied, and by which he was deceived, he may, on learning of the fraud, rescind the contract of sale and recover the goods. If the goods were sold and delivered to the carrier in another state, the Pennsylvania courts will apply the law of the place of sale and allow the contract to be rescinded, if the laws of that place permit. If you want to rescind a sale, send with claim full statement of grounds on which rescission is to be made, and under the laws of what state you wish to claim, and give a statement of the grounds on which the law of your state allows the sale to be rescinded. Accompany this with a detailed invoice of the goods, giving case or package numbers, brands, and all possible marks of identification, and if possible arrange to have some one on the ground who can positively identify the goods. Defendant should be notified of the rescission of sale and a demand made for return of the goods. If the price of the goods has been partly paid or secured, it is necessary to tender back the part payment or security, but the part payment need not be returned if defendant has already sold part of the goods in question for enough to cover the amount of such part payment. If the goods are in possession of defendant or an assignee for the benefit of creditors, the remedy is replevin; if in the hands of the sheriff, a claim is filed with that officer, notifying him that he has levied on certain goods that do not belong to defendant in his execution. A fee must be paid with this notice, whereupon the sheriff requires claimant to positively

identify the goods claimed, which are set aside and appraised. These goods are not sold, but await the decision of the court as to whether the grounds set forth in an affidavit to be filed by claimant are sufficient to justify awarding a jury trial to determine the ownership of the goods. The subsequent proceedings are practically the same as in a replevin suit. If claimant does not give bond the sheriff proceeds to sell the goods and pays the money into court, and the contest is then over the fund. If you have no grounds for rescission, then file suit and obtain judgment and issue execution upon all the debtor's goods. The sheriff then sells these goods and the proceeds are distributed by him to the persons who had issued executions, in the order of the filing and service of the executions. If another execution is ahead of yours and it can be proven that such execution was fraudulently obtained, the validity of the execution may be attacked by obtaining the proper court order directing the sheriff to pay the proceeds of the sale into court, where the validity of the respective executions and their liens will be decided.

Abstracts of the Statute of Limitations.

Alabama.—Judgments of courts of records, *twenty years.* Actions to recover real property, contracts or writings under seal, actions against sheriffs, coroners, constables, and other public officers, for malfeasance in office, *ten years.* Trespass to the person or real or personal property, all promises and writings not under seal, actions for recovery of loan or on an account stated, actions for the use and occupation of land, actions against sureties of public officers, and sureties of executors, administrators, and guardians, and judgments of justices of the peace, and actions on simple contract or specialty not specifically enumerated, *six years.* Certain actions or equities of redemption in lands sold by decree of court, *five years.* Actions against surety to writ of error, appeal bond, etc., except on those given in courts of the state, *four years.* Actions on open or unliquidated account to be computed from date of last item, or time when account was due, *three years.* Actions by personal representative for death of testator or intestate, *two years.* Malicious prosecutions, criminal conversation, seduction, breach of promise, and libel and slander, actions for statutory penalties, actions for damages for personal injury or death of a minor under statute, all other actions for injury to person or rights not arising from contract, *one year.* Persons under disability have three years after the removal of the same in which to sue or defend, but action must be brought within *twenty years.* Period of defendant's absence from the state is not included. Part payment or unconditional promise in writing only will revive cause of action.

Alaska.—Actions for the recovery of real property, upon a sealed instrument, upon a judgment, *ten years;* on contract, or upon a statutory liability, except for a penalty or forfeiture, for waste or trespass upon real property, *six years;* against a marshal, coroner, or constable officially, except for an escape, for statutory penalty or forfeiture, *three years;* for libel, slander, assault, battery, seduction, false imprisonment, injury to person, *two years;* for escape, *one year.* Cause of action upon open, mutual and current account is deemed to have accrued at the date of the last item. Time during which a defendant is absent from the territory is not a part of the time limited. Persons under a disability must commence suit within two years after the removal of the same. Acknowledgment in writing by the party to be charged takes the case out of the statute.

Arizona.—Actions to recover real estate held under recorded title, on domestic judgments, *five years*. Where real estate is held under color of title, action in *three years*; held under recorded title, cultivated, used and enjoyed, action in *ten years*. Actions on bond to convey real estate, partnership accounts, and accounts between merchant and merchant, judgments rendered without the territory, or upon an instrument in writing executed outside the territory, actions for debt founded upon a contract in writing, actions upon the bond of an administrator, etc., actions for the specific performance of contracts for the conveyance of real estate, and all other actions where no provision made, *four years*. Actions on contracts not in writing and on stated or open accounts, *three years*. Trespass, trover, and conversion, and claim and delivery of personal property, injury to person resulting in death, *two years*. Actions for injury to the person, malicious prosecution, false imprisonment, libel, slander, seduction, breach of promise, *one year*. Limitation is suspended during absence from the territory. New acknowledgment or promise must be in writing. Persons under a disability shall have the same time after the removal thereof.

Arkansas.—Actions to recover real property, *seven years*. But persons under legal disabilities may bring their action within *three years* after the removal of such disability. Judgments, *ten years*. Actions on bonds of executors and administrators, *eight years;* on official bonds of sheriffs, coroners, and constables, *four years*. Promissory notes and other instruments in writing, including those under seal, *five years*. Contracts not in writing, trespass on lands, libels and actions for taking or injuring goods and chattels, *three years*. Actions against sheriffs and coroners, except for escape, *two years*. Actions for criminal conversation, assault and battery, false imprisonment, slander, actions against sheriffs for escape, *one year;* all other causes of action, *five years*. Suits on mortgages must be brought before the debt secured thereby is barred. In all cases except actions to recover real property, the limitation in regard to persons under disabilities begins to run from the removal of the same. In actions on an account current, the cause of action accrues from the last item proved in the account. Any new promise must be in writing, and signed by the party to be charged. Actions which survive may be brought by and against executors and administrators within *one year* from the death of the party, or the granting letters testamentary or of administration. Any action failing for any cause not affecting the right of action may be recommenced within *one year* after such failure.

California.—Actions to recover real property or mesne profits of same, *five years*. Judgments of courts of record, *five years*. On contracts, obligations, or liabilities founded on an instrument in writing executed in the state, *four years*. Actions on statute liabilities, other than penalties and forfeitures, trespass on real estate, trover, detinue, and replevin, actions in case of fraud, the time beginning to run from discovery of the same, *three years*. Contracts not in writing or on written instruments executed out of the state, and actions against sheriffs, coroners, and constables, for acts done in official capacity, except for escapes, *two years*. Actions for statute penalties or forfeitures or for an undertaking in a criminal action, libel, slander, assault, battery, false imprisonment, seduction, actions against sheriffs and constables for escapes, action against a municipal corporation for damages caused by a mob or riot, actions for personal injury due to the wrongful act or negligence of another, and actions against banks for payment of a forged or raised check, *one year*. Action for property seized by tax collector, *six months*. All other actions must be commenced within *four years*. There is no limitation to actions against a bank or trust company for the recovery of deposits. In actions on mutual, open, and current accounts, the cause of action is deemed to have accrued from the last item proved on either side. The time of limitation is not to run against persons out of the state. The limitation in case of persons under disabilities at the time of accrual of right begins to run from the removal of the same. New promise to revive action must be in writing.

Colorado.—Actions for recovery of real property, *eighteen years.* In case of actual possession under connected chain of title, *seven years.* Persons under disability are allowed two years after removal of disability. Persons in possession under color of title for seven years and payment of taxes, or in case of unoccupied land after seven consecutive years' payment of taxes, are deemed owners to extent of paper title. Actions on contracts, express or implied, judgments of courts not of record, rent, waste and trespass on land, taking, detaining, or injuring personal property and assumpsit, *six years.* Actions concerning water rights, *four years.* Actions for injury or death of employee, *two years.* Assault and battery, false imprisonment, slander, libel, actions against sheriffs or coroners, except for escapes, *one year.* Escapes, *six months.* All other personal actions, *three years.* Limitations in case of persons under disabilities begin to run from date of removal of same. When the cause of action accrued out of the state on a contract, judgment, or sealed instrument, action must be brought within *six years* of the time it accrued. If cause of action accrued out of the state more than six years before, and was there put in judgment more than *three months* before action brought here, statute may be pleaded in bar if defendant is a *bona fide* resident, and may be pleaded upon any judgment or decree rendered in any court out of the state against a *bona fide* resident of the state upon any debt, contract, or liability barred in this state by Statute of Limitations.

Connecticut.—Actions to recover real property, *fifteen years.* But persons under legal disabilities may bring such action within *five years* after removal of the disability. Suits on contracts under seal and promissory notes not negotiable, *seventeen years;* and persons under disabilities, within *five years* after removal of the same. Actions on all simple contracts, book debts, debt on simple contract, contracts in writing not under seal, except notes not negotiable, *six years.* Persons under disabilities, *three years* after removal of the same. In cases of settlement of partnership, or joint occupancy of real or personal estate or joint accounts, courts will take into consideration all the joint transactions since the time of the last settlement, though more than *six years* have elapsed since said settlement. Except the cases mentioned above, an action founded on any express contract or agreement not reduced to writing, actions of trespass, or slander, must be brought within *three years.* Actions for damages for loss of life from negligence, *one year* from the date of the negligence complained of. Actions for damage to person or property caused by negligence of municipality, railway, or street railway company may be brought within *one year;* provided that no such action may be brought against a tramway or railroad company unless proper notice of the injury is given within four months of date of injury. Any action properly begun, and failing for a cause not affecting the right of action, may be recommenced within *one year* after such failure, except actions against executors and administrators, which may be begun again within six months. When cause of action is fraudulently concealed, the limitation shall begin to run from discovery of the right of action by the person entitled.

Delaware.—Real actions, actions on sealed instruments and judgments, *twenty years;* but persons under disabilities may bring a real action within *ten years* from removal of the same. On official bonds of sheriffs, executors, and administrators, and actions on promissory notes, bills, and acknowledgments in writing, *six years.* On guardian's bonds, *three years* from determination of guardianship. Trespass, replevin, detinue, debt others than specialty, account, assumpsit, and case, *three years.* Personal injury, *one year.* Time of defendant's absence from the state is not included. In mutual and running accounts, the limitation does not begin to run while the account is open. Persons under disabilities may begin personal actions within *three years* after removal of disability.

District of Columbia.—Actions on bill, bond, judgment, or other specialty, *twelve years.* Actions upon simple contracts, including bills of exchange and notes not under seal, book debt or account, debt, detinue and replevin and trespass to real estate, *three years.* Slander, trespass, assault

and battery, wounding, and imprisonment, *one year.* Persons under disability have the same time after removal of the same.

Florida.—Real actions against person claiming under color of title, *seven years;* in other cases, *twenty years.* Domestic judgments, and writings under seal, *twenty years.* Foreign judgments, *seven years.* Writings not under seal, *five years.* Statute liabilities other than penalties and forfeitures, trespass on real property, trover, detinue, and replevin, and contracts not in writing, except an open account for goods, wares, and merchandise, action for relief on ground of fraud, *three years.* Statute penalties and forfeitures, libel, slander, assault, battery, false imprisonment, and actions on open accounts, *two years.* Action for articles charged in a store account and those for causes other than those above mentioned, *three years.* In actions to recover a balance due on mutual, open, and current accounts, the cause of action is deemed to have accrued from the date of the last item proved on either side. New promise must be in writing. Persons under a disability may within seven years after the removal thereof begin real actions.

Georgia.—Actions to recover real property, *twenty years;* but if defendant claim under written evidence of title, *seven years;* foreign judgments, *five years;* domestic judgments, *seven years.* Sealed instruments, and actions to enforce rights accruing under statutes, acts of incorporation or by operation of law, *twenty years.* Contracts in writing, including bills and notes, *six years.* Open accounts and contracts not in writing, trespass on realty, or personalty, *four years.* Injuries to person, except libel and slander, *two years.* Libel and slander, *one year.* Limitations in case of persons under disabilities begin to run from the removal of the same. Any new promise must be in writing. The time of limitation is not to run in favor of persons out of the state.

Idaho.—Judgments and actions for *mesne* profits of real estate, *six years.* Contracts and obligations in writing, *five years;* those not in writing, *four years.* Statute liabilities other than penalties and forfeitures, trespass on real estate, taking, detaining, or injuring goods and chattels, and actions for relief on the ground of fraud or mistake, *three years.* Actions against officers for seizing, detaining, or injuring property, actions for penalty or forfeiture, on a statute or undertaking in a criminal case, to recover damages for death, for libel, slander, assault and battery, false imprisonment, seduction, or escape, *two years.* A cause of action barred in the state or territory where it arose is barred here.

Illinois.—Actions to recover real property, and judgments of a domestic court of record *twenty years;* but seven years residence with connected record title, or seven years actual possession under claim and color of title and payment of all taxes legally assessed, or in the case of unoccupied land, *seven years,* payment of taxes made in good faith under claim and color of title, constitutes ownership to the extent of the paper title. Bonds, promissory notes, bills, written leases, written contracts, and other indebtedness in writing, judgments of a domestic court not record, and suits for foreclosure of mortgages, *ten years.* Unwritten contracts, judgments of a foreign court of record, awards of arbitration, damages to real or personal property, detinue, and trover, and all civil actions not otherwise provided for, *five years.* Injuries to person, false imprisonment, malicious prosecution, statutory penalties, abduction, and seduction, *two years.* Slander and libel, *one year.* Actions against the representatives of deceased persons, *one year* from issuing letters testamentary or of administration. Persons under disabilities may bring real or personal actions within *two years* from the removal of the same. If any person, liable to an action, conceals the same, the statute begins to run from date of the discovery. Any action defeated for any cause not affecting the right of action may be begun again within *one year* from such defeat. New promise must be in writing. The time of debtor's absence from the state is not included in the period of limitation.

Indiana.—Real actions, judgments of a court of record and contracts in writing, other than those for the payment of money, *twenty years.* Promis-

sory notes, bills of exchange, and other written contracts for the payment of money, *ten years*. Accounts and contracts not in writing, use, rents, and profits, of real estate, injuries to property, trover, replevin, actions for relief against fraud, and for money collected by a public officer, *six years*. Injuries to person or character, statutory penalties, and indentures of apprenticeship, *two years*. Actions for the recovery of real property sold on execution, brought by the debtor or any person claiming under him, by title acquired after judgment, *ten years* from sale; for real property sold by executors, etc., on a judgment, by a party to the judgment or persons claiming under him, subsequent to the judgment, *five years* after confirmation of sale. Actions not specially limited by statute, *fifteen years*. Time of debtor's absence from the state not included. In mutual, open, and current accounts, the cause of action is deemed to have accrued from date of last item proved. Persons under disabilities at the time of accrual of right may bring their action within *two years* after removal. An action failing for a cause not affecting the right other than plaintiff's negligence, may be recommended within *five years*. New promise must be in writing.

Iowa.—Judgments of court of record, *twenty years*. Real actions, judgments other than of courts of record and written contracts, *ten years*. Contracts not in writing, and injuries to property, fraud, and all other actions not otherwise provided for, *five years*. Actions against sheriffs and public officers, *three years;* injuries to person or reputation, and statute penalties, *two years*. In open accounts, the cause of action accrues from the date of the last item proved. In all cases where by the death of a party an action against his estate is delayed beyond the limitation, such limitation shall be extended six months from such death. In the case of larceny by an administrator, executor, or guardian, statute does not begin to run until the settlement of the estate or the attainment of majority by the ward, as the case may be. Persons under disabilities may begin action within *one year* from the removal of the same. New promise or acknowledgment must be in writing. Period of debtor's non-residence in the state not included but actions barred where debtor has previously resided, are barred here.

Kansas.—Actions for recovery of land sold on execution, or by administrators, etc., by order of the court, or for taxes, *five years* from the recording of the deed, other real actions, *fifteen years;* but persons under disabilities may bring action within *two years* after removal. Contracts and agreements in writing, and actions on bonds of executors, etc., *five years*. Contracts not in writing, and statutory liabilities, other than penalties or forfeitures, *three years*. Trespass on real property, actions for taking, detaining, or injuring personal property, relief from fraud and injuries to rights arising on contract and not herein enumerated, *two years*. Libel, slander, assault and battery, malicious prosecution, false imprisonment, penalties, and forfeitures, *one year*. Time of debtor's absence from the state not included, and causes of action arising in another state, and barred there, are barred here also. Persons under disabilities may begin personal action within *one year* after removal thereof. After failure of an action for any cause not affecting the right of action, new action may be begun within *one year*. Acknowledgment of a debt barred must be in writing.

Kentucky.—Real actions, *fifteen years;* but *seven years'* occupation under connected record title is a bar. Persons under disabilities at the time of the accrual of such right may bring an action within *three years* after the removal of the same, provided the whole time is not extended beyond *thirty years*. Actions on judgments, bonds, and written contracts, *fifteen years*. Contracts not in writing, statute liabilities, penalties and forfeitures, trespass on real and personal property, trover, detinue, replevin, bills, notes, and checks, and accounts between merchant and merchant, relief from fraud, and any action for injury to plaintiff's rights not arising on contract and not specially enumerated, *five years*. Merchants' accounts for goods sold, or charged in store account, *two years* from first day of January, after delivery. Injuries to person, criminal conversation, breach of promise, seduction,

malicious prosecution, conspiracy, libel and slander, *one year*. In case of persons under disabilities, limitation begins to run from the removal of the same. Executors and administrators may bring actions which survive *one year* after death of party entitled. Absence from the state suspends the running of the statute in one's favor.

Louisiana.—Prescription against immovables, *ten years* under title, and in good faith, *thirty years* without reference to title or good faith. Against movables, *three years* in good faith and under title. Actions on judgments for money and stated accounts, and all personal actions not specially provided for, *ten years*. Bills and notes, *five years*. Arrearages of rent, money lent, accounts of merchants, annuities, alimony, salaries of clerks, physicians, apothecaries, surgeons, sheriffs, and attorney's accounts, *three years*. Libel and slander, and actions by workmen, etc., for wages, and by inn-keepers for lodging and board, freight of vessels and wages of crew, *one year*. Prescription does not run against minors and persons under interdiction unless specified by law.

Maine.—Judgments of courts of record, *twenty years*. Real actions, *twenty years;* persons under disabilities, *twenty years* from removal of same, provided the whole time is not extended beyond *forty years*. Witnessed promissory notes and bank bills, *twenty years*. Debt on contract, and liabilities not under seal, judgments not of record, arrears of rent, assumpsit, and all actions on the case, waste, trespass, replevin, trover, and detinue, *six years*. Assault and battery, false imprisonment, libel and slander, *two years;* escape, *scire facias* against bail and trustees, *one year;* all other personal actions, *twenty years*. On mutual and current accounts action accrues from the last item proved. Limitation in case of persons under disabilities begins to run from removal of the same. After failure of action for any cause not affecting the right, a new action may be begun within *six months*. An acknowledgment must be express and in writing to revive a debt. Time of debtor's absence from the state is not included in period of limitation.

Maryland.—*Twenty years* gives title to land. Actions on judgments, recognizances, specialties, bonds of executors and administrators, and other officers, *twelve years*. Actions of account, assumpsit, or on the case, debt on simple contract, for rent in arrear, detinue, and replevin, trespass for injuries to real or personal property, illegal arrest or false imprisonment, *three years*. Slander and trespass to person, *one year*. In case of persons under disabilities, limitation begins to run from the removal of the same. Persons under disabilities may bring personal actions within the time limited after the removal of such disabilities. The time of limitation does not run in favor of persons absent from the state.

Massachusetts.—Real actions, *twenty years*. Witnessed promissory notes by original payee, and bills and notes of a bank, *twenty years*. Contracts not under seal, actions for arrears of rent, except upon leases under seal, replevin, and all other actions for taking, detaining, or injuring goods or chattels, and tort, except as hereafter specified, *six years*. Assault and battery, false imprisonment, slander, and libel, *two years*. Actions against executors, trustees, sheriffs, etc., for taking personal property, *two years*. Actions for penalties on forfeitures by person to whom penalty is given, *one year*. On mutual and open account current, cause of action is deemed to have accrued at the time of the last item proved. Persons under disabilities may bring their action within the time limited after the removal of such disabilities. Limitations do not run against persons out of state. Actions by and against an executor or administrator or a deceased person within *two years* from granting letters testamentary or of administration. After failure of an action for any cause not affecting the right of action, a new action may be begun within *one year*. New promise must be in writing. All other actions not otherwise limited, including those on judgments of courts of record, *twenty years*.

Michigan.—Real actions where defendant claims title through deed

made upon sale by executor, sheriff, etc., under order of court, *five years*, where he claims title under deed made on tax sale, *ten years;* in all other cases, *fifteen years*, except when party entitled was absent from the United States, and not in British Provinces when right of action accrued, and in that case, *twenty years*. Judgments of courts of record, *ten years*. Actions of debt upon contracts not under seal, judgments of courts not of record, actions for arrears of rent, assumpsit, or case founded on any contract or liability, waste, replevin, and trover, and all other actions for taking, detaining, or injuring goods or chattels and for all actions on the case except slander and libel, *six years*. Actions against sheriffs for misconduct of deputies, and actions for personal injuries, *three years*. Trespass on land, assault and battery, false imprisonment, libel and slander, *two years*. In actions on an account current, the cause of action is deemed to have accrued from the date of the last item proved in the account. Limitations in the case of persons under disabilities begin to run from the removal of the same. In case of death, actions which survive may be brought by or against executors and administrators within *two years* after granting letters testamentary or of administration. After an action fails for any cause not affecting the right, a new action may be begun within *one year*. Time of defendant's absence from the state is not included in limitation.

Minnesota.—Real actions and foreclosures of mortgages, *fifteen years*. On judgments of courts of record, *ten years*. Contracts, statutory liability, trespass on real estate, actions for taking, detaining, or injuring personal property, replevin, injuries to the person or rights of another not arising on obligation, and actions for relief from fraud, dating from the time of the discovery of the same, *six years*. Actions against sheriffs, coroners, and constables, *three years*. Libel, slander, assault, battery, and false imprisonment, or other tort resulting in personal injury, *two years*. Time of defendant's absence from the state is not included. On mutual and current accounts, the cause of action accrues from the date of the last item proved on either side and suit may be brought within *six years*. Persons under disabilities other than infancy, within *one year* after removal of the same, provided the original limitation is not extended more than *five years*, and infants within *one year* after coming of age. After the failure of any action for a cause not affecting the right, a new action may be begun within *one year*.

Mississippi.—Real actions, *ten years*. On judgments rendered in another state against a citizen of this state, *three years*, other judgments, *seven years*. Actions on a promissory note, bill of exchange, or other contract in writing, waste and trespass on real estate, detinue, trover, or other action for the recovery of personal property, or damages for its conversion, *six years*. Actions on open account and verbal contracts, *three years*. Assault, battery maiming, false imprisonment, malicious arrest, slander, and libel, and actions for death of employee, *one year*. In case of persons under disabilities, limitations begin to run from the removal of the same. Actions against executors and administrators within *four years* from the date of the letters testamentary or of administration, but no suit shall be brought within six months of the issuance of letters. After the failure of any action for a cause not affecting the right of action, a new action may be begun within *one year*. Any new promise or acknowledgment must be in writing. When the right to recover on a debt secured by mortgage is barred, the remedy on the mortgage is also barred. The time of limitation does not run in favor of persons absent from the state.

Missouri.—Real actions, *ten years*. Writings, sealed or unsealed, for the payment of money or property, actions on covenants in deeds, and actions for relief not otherwise provided for, *ten years*. Judgments are presumed to be satisfied in *ten years*. Actions on contracts not in writing, express or implied, on open accounts, statutory liabilities, injury to the person or to personal property, actions for relief on ground of fraud, trespass on real estate, trover, detinue, and replevin, *five years*. Actions against sheriffs, coroners, or other officers, in their official capacity, statutory penalties, *three*

years. Libel, slander, assault, battery, false imprisonment, and criminal conversation, *two years.* Limitations in case of persons under disabilities begin to run from the removal of the same. Any action failing for a cause not affecting the right of action may be brought anew within *one year* after such failure. Any new promise must be in writing. The time of defendant's absence from the state without leaving a family or place of abode in the state is not included in the period of limitation.

Montana.—Real actions and judgments of courts of record, *ten years.* Contracts in writing, *eight years.* Statutory liabilities other than penalty or forfeiture, contracts not in writing, trespass on real estate, taking, detaining, or injuring goods or chattels, relief on ground of fraud or mistake, action to establish a will, judgments of courts not of record, and actions not otherwise provided for, *five years.* Actions against a sheriff or constable except for escape, and actions for damages for death, *three years.* Statutory penalties and forfeitures, libel, slander, assault and battery, false imprisonment, or seduction, *two years.* Action against sheriff for escape, action against city for injuries by mob, action for violation of municipal ordinance, action against tax collectors, action for killing or injuring stock by railroad, *one year.* Time of defendant's absence from the state is not included. Cause of action barred in state where it accrued is barred here. Persons under disabilities may bring actions within the time limited after removal of such disabilities, but in no case shall the period be extended more than ten years in real actions, or five years in personal actions, except when the disability is infancy.

Nebraska.—Real actions, foreclosure of mortgages, and actions on official and penal bonds, *ten years.* Specialties, contracts in writing, foreign judgments, *five years.* Contracts not in writing express or implied, damages for failure of consideration of contract, statutory liabilities, except penalties and forfeitures, trespass on real property, trover, detinue, replevin, and relief on ground of fraud, *four years.* Libel, slander, assault and battery, malicious prosecution, false imprisonment, statutory penalties and forfeitures, and forcible entry and detainer, *one year.* Persons under disabilities may bring action within the time limited after removal of the same. New promise in writing, or partial payment revives the debt. Actions which have been barred by the laws of any other state or territory are barred here.

Nevada.—Real actions, except for mining claims, *five years.* Judgments and contracts in writing, *six years.* Actions on open account for goods sold and delivered, or charged in store account, and contracts not in writing, *four years.* Statute liabilities other than penalties or forfeitures, trespass on real estate, taking, detaining, or injuring goods and chattels, specific recovery of personal property, and relief on ground of fraud dating from the discovery thereof, *three years.* Actions for the recovery of mining claims, actions against sheriffs, etc., in their official capacity, statute penalties and forfeitures, libel, slander, assault, battery, and false imprisonment, *two years.* Statute does not run during defendant's absence from the state, or against persons under disability. Acknowledgment or new promise must be in writing. Actions barred by the laws of any other state or territory are barred here. An action on a judgment, obligation, liability, contract for the payment of money or damages obtained or incurred out of the state must be commenced within *two years.*

New Hampshire.—Real actions, and actions on notes secured by mortgage, *twenty years;* persons under legal disabilities at the time of accrual of the right, *five years* from the date of removal of the same. On judgments, recognizances, and contracts under seal, *twenty years.* Trespass to the person and actions for defamatory words, *two years.* All other personal actions, *six years.* Writ of error, *three years* after judgment. *Scire facias* against bail and indorsers of writs, *one year.* Persons under disabilities may bring any personal action within *two years* after removal of the same. Any new promise, verbal or written, revives a debt. The time of limitation does not run in favor of persons absent from the state.

New Jersey.—Real actions, *twenty years*. On judgments, *twenty years*. On lease under seal or contract under seal for payment of money only, *sixteen years*. Trespass, detinue, trover, replevin, debt other than specialty, actions on an account and actions on the case except slander, *six years*. Assault and battery, wounding, and imprisonment, *four years*. Slander and actions for injuries to person caused by wrongful act or neglect of any person or corporation, *two years*. In case of persons under disability, limitation begins to run from date of removal. Limitations do not run against persons out of the state. Debt revived by written promise or by part payment.

New Mexico.—Real actions, *ten years*. Persons under disability, *one year* from the removal of the same. Judgments, *seven years*. Notes and other contracts in writing, *six years*. Accounts, contracts not in writing, injuries to property, conversion of personal property, relief on ground of fraud, and all other actions not specially provided for, *four years*. Actions against sureties on official bonds, against sheriffs, in their official capacity, injuries to person or reputation, *two years*. Suits against estates of deceased persons must be brought within *eighteen months* after death. Representatives of persons dying within one year of expiration of limitation have *one year* from death to bring suit. Persons under disability are allowed *one year* from the removal of the same. New promise must be in writing.

New York.—Real property, *twenty years*. Judgments, and sealed instruments, *twenty years*. Contracts, obligations, and liabilities, express or implied, other than the above, statute liabilities other than penalty or forfeiture, actions for relief on ground of fraud, judgments of courts not of record, actions for injury to property or persons, except as otherwise provided, and for recovery of chattels, *six years*. Actions for statutory penalties or forfeitures, against sheriffs or other officer for non-payment of money collected, against constables except for an escape, actions for injury to the person resulting from negligence, and action against executor, etc., for taking or injuring personal property, *three years*. Libel, slander, assault, battery, seduction, false imprisonment, malicious prosecution, and forfeitures to the state, *two years*. Against sheriffs for official liability, except non-payment of money collected, against other officers for an escape, *one year*. All other actions, *ten years*. In actions on an account current, the cause of action is deemed to have accrued from the date of the last item proved on either side. Limitation does not run against a person during his absence from the state, unless he designate a representative in manner provided by statute. New acknowledgment or promise must be in writing. Persons under disability may bring action within the time limited after removal of such disability, but in no case shall the period be extended more than ten years in real actions, or five years in personal actions except in case the disability be infancy.

North Carolina.—Real actions, *twenty years;* where adverse possession is under color of title, *seven years;* persons under disabilities, *three years* after removal of the same. Judgments of a court of record, sealed instruments, foreclosure, and redemption of mortgages, *ten years*. Judgments of courts not of record, and actions by creditors of a deceased person against his representatives, *seven years*. Bonds of public officers, executors, etc., and actions for injury to any incorporeal hereditament, *six years*. Actions against any railroad company for compensation for right of way, use and occupancy of land, and for damages caused by the construction of a road, *five years*. Actions on contracts or liabilities arising out of contracts, actions, on statute liabilities other than penalty of forfeiture, trespass on real property, actions for taking, converting, or injuring goods and chattels, criminal conversation or any other injury to the person or rights of another not arising on contract or otherwise provided for, actions against sureties on bonds of executors, administrators, and guardians, *three years*. Actions against sheriffs, etc., for trespass under color of office, libel, assault, battery, and false imprisonment, actions for escape against sheriffs and other officers, *one year*. Slander, *six months*. Actions for relief not otherwise provided for, *ten years*. Persons under disabilities may bring their action within the time limited after removal

of the same, except in case of actions for escape. Actions by and against representatives of deceased persons, *one year* after death. New promise must be in writing. Time of absence from the state, if more than a year, is not reckoned.

North Dakota.—Real actions, *twenty years*. Actions on judgments and instruments affecting title to real property, *ten years*. Actions on other contracts and obligations, express or implied, statutory liabilities other than penalties and forfeitures, trespass on real property, taking, detaining, injuring, or for recovery of personal property, criminal conversation and other injuries to persons and rights not arising on contract, relief on ground of fraud, *six years*. Actions against sheriffs, etc., except for escape, actions for penalties and forfeitures, *three years*. Libel, slander, assault and battery, false imprisonment, and malpractice, *two years*. Escape, *one year*. All other actions, *ten years*. Limitation does not run against persons out of the state. Persons under disability may bring action within the time limited after removal of such disability, but in no case shall the period be extended more than ten years in real actions or five years in personal actions except in case the disability be infancy.

Ohio.—Real actions, *twenty-one years*. Persons under disabilities, *ten years* after removal of the same. Bonds of executors, administrators, guardians, sheriffs, or other officers, *ten years*. Specialties and contracts in writing, *fifteen years*. Contracts not in writing, and statutory liabilities other than penalty or forfeiture, *six years*. Trespass on real property, trover, replevin, detinue, other actions for injury to the rights of plaintiff not arising on contract and for relief from fraud, *four years*. Forcible entry and detainer, *two years*. Libel, slander, assault, battery, malicious prosecution, false imprisonment, and malpractice, statutory penalty or forfeiture, *one year*. Actions for relief not enumerated, *ten years*. In case of persons under disabilities, limitations begin to run from the removal of the same. Any new acknowledgment must be in writing. Time of defendant's absence from the state is not included. Cause of action barred in state where it arose is barred here.

Oklahoma.—Real actions, *fifteen years*. Actions on written contracts or official bonds, *five years*. Contracts not in writing, express or implied, and statutory liabilities other than penalty or forfeiture, *three years*. Trespass on real property, taking, detaining, or injuring personal property and relief on ground of fraud, *two years*. Foreign judgments, libel, slander, assault, battery, malicious prosecution, false imprisonment, penalties and forfeitures, *one year*. Other actions for relief, *five years*. Persons under a disability should bring suit within two years after the removal thereof.

Oregon.—Real actions, judgments of record and sealed instruments, *ten years*. Other contracts, *six years*. Statutory liabilities other than penalty or forfeiture, waste, trespass on real estate, trover, detinue, and replevin, *six years*. Actions against sheriffs, coroners, and constables in official capacity, except for escape, penalties and forfeitures, *three years*. Libel, slander, assault and battery, and false imprisonment, or for any injury to the person, or rights of another, not arising on contract, and not specifically enumerated, *two years*. Actions against officers for an escape, *one year*. In actions on mutual, open, and current account, the cause of action is deemed to have accrued from the last item proved, but when one year shall have elapsed between any of a series of items, they are not to be deemed such an account. Limitations do not run against persons out of the state. Persons under disabilities, except infants, may bring action within *one year* after removal of the same, provided the time is not extended more than *five years*, and infants *one year* after attaining their majority. New promise must be in writing.

Pennsylvania.—Real actions, *twenty-one years;* persons under disabilities, *thirty years* after the right of entry accrued. Trespass on real property, detinue, trover, replevin, actions of account and on the case, and actions of debt other than specialty, *six years*. Suits for specific performance, or

to enforce trust or equity of redemption, *five years*. Judgments, mortgages, and sealed instruments are presumed paid after *twenty years*, unless such presumption is positively rebutted. Trespass to the person not resulting in death, *two years;* in case of death, *one year*. Slander and libel, *one year*. Limitations, in case of persons under disabilities, begin to run from removal of the same. Cause of action barred in state where it arose is barred here.

Rhode Island.—Actions to recover real property are not limited, but ten years of quiet, uninterrupted, and adverse possession is a good evidence of title. Slander, *one year*. Trespass, *four years*. Actions of ac ount, except such as concern the trade or merchandise between merchant and merchant; actions on the case, except for slander, debt founded on contract, except specialty, actions for arrearages of rent, actions of detinue and replevin, *six years*. Debt other than the preceding and covenant, *twenty years*. In case of persons under disabilities, the limitation begins to run from the removal of the same. Actions against executors and administrators, except for funeral charges and expenses of last illness, cannot be brought for *six months* after first publication of notice of appointment, and must be brought within *two years* after such notice. Limitation does not run in favor of a defendant during his absence from the state unless he leave property within the state which can be taken by ordinary process of attachment.

South Carolina.—Real actions, *ten years*. Judgments and sealed instruments, other than sealed notes and bonds for the payment of money only not secured by mortgage, *twenty years*. Other contracts, statutory liabilities, except forfeitures and penalties, trespass on real estate, trover, detinue, and replevin, criminal conversation, or any other injury to the person or rights of another not arising on contract, and relief from fraud, *six years*. Actions against sheriffs, coroners, constables in official capacity, except for escapes, and actions for penalties and forfeitures, *three years*. Libel, slander, assault, battery, false imprisonment, and penalties and forfeitures to state, *two years*. Actions against officers for an escape, *one year;* other actions for relief, *ten years*. In actions of account, the limitation begins to run from the last item proved on either side. Persons under disabilities may bring action for recovery of real estate within *five years* after the removal of the same, provided the time is not extended more than ten years; in other cases within *one year* of such removal, but not to extend time more than five years. Period of defendant's absence from the state if more than one year, is not included.

South Dakota.—Real actions and actions on judgments rendered in the state, and on sealed instruments, *twenty years*. Other judgments, *ten years*. Actions on other contracts, express or implied, statutory liabilities other than penalties or forfeitures, trespass on real property, taking, detaining, or injuring personal property, or recovering same, criminal conversation, or other injury to rights of others not arising on contract, relief on ground of fraud, *six years*. Actions against sheriffs, etc., except for escape, and for penalties and forfeitures, *three years*. Libel, slander, assault and battery, and false imprisonment, *two years*. Actions against sheriff for escape, *one year*. Other actions, *ten years*. Limitation does not run against person out of the state. Persons under disability may bring action within the time limited after removal of such disability, but in no case shall the period be extended more than *ten years* in real actions, or *five years* in personal actions, except in case the disability be infancy.

Tennessee.—Real actions, *seven years*. Actions against guardians, executors, administrators, sheriffs, clerks, and other public officers, on their official bonds, judgments, mortgages, and all other cases not expressly provided for, *ten years*. Actions against the sureties of guardians, executors, administrators, sheriffs, clerks, and other public officers, and actions for rent, and for use and occupation of land, and on other contracts not mentioned, *six years*. Injuries to real or personal property, detinue, and trover, *three years*. Libel, injuries to person, false imprisonment, malicious prosecution, seduction, breach of promise, and statutory penalties, *one year*. Slander,

six months. A new action may be begun within *one year* after the reversal or arrest of judgment in the original. Persons under disabilities may bring action within *three years* after removal of the same, unless the limitation is less than three years, in which case action must be brought within the time limited after such removal. Actions by a resident of the state against an executor, etc., must be brought within *two years and six months* after his appointment, by a non-resident within *three years and six months*. Period of defendant's absence from the state is not included. Actions barred by the laws of the state where they accrued are barred here.

Texas.—Real actions, against one in possession under color of title, *three years*. *Five years* peaceable possession of real estate, cultivating and using the same, paying taxes thereon, and claiming under registered deed, not forged, gives good title. *Ten years* peaceable possession, cultivation, and enjoyment, without evidence of title, gives full title to one hundred and sixty acres, and to all beyond in actual possession. Judgments and suits for specific performance of agreement to convey land, *ten years*. Debt on written contract, by copartners for settlement of partnership accounts, mutual current accounts between merchants, and all other cause of action not specially enumerated, *four years*. Injuries to the person or property of another, conversion or detention of personal property, forcible entry and detainer of real estate, actions on open accounts, except between merchants, and contracts not in writing, *two years*. Injuries to the character or reputation of another, and breach of promise, *one year*. Limitation does not run against persons under disability.

Utah.—Real actions, *seven years*. In case of disability, two years after the removal thereof. Judgments, *eight years*. Contracts or obligations in writing, and actions for mesne profits of land, *six years*. Contracts not in writing, and open accounts for goods, *four years*. Statute liabilities, other than penalties or forfeitures, trespass on real estate, detinue, replevin, conversion of personal property, and relief on the ground of fraud, dating from the discovery thereof, *three years*. Actions against sheriffs, etc., and actions for death caused by wrongful act or neglect, *two years*. Statutory penalties and forfeitures, libel, slander, assault and battery, or false imprisonment, *one year*. Period of defendant's absence from the territory is not included. New acknowledgment or promise must be in writing. Persons under a disability may bring actions within *two years* of removal.

Vermont.—Real actions and actions on covenants of seizin in deeds of land, *fifteen years*. Witnessed promissory notes, *fourteen years*. Judgments of courts of record, specialties, and covenants except of seizin, *eight years*. Debt on any contract, obligation, or liability, not under seal, or on judgments of courts not of record, debt for rent, actions of account, assumpsit, or case founded on any contract or liability; trespass on land, replevin, trover, and detinue, and actions on the case, except libel and slander, *six years*. Action against sheriff for act of deputy, *four years*. Assault and battery, and false imprisonment, *three years*. Libel and slander, *two years*. Executors and administrators may bring actions which survive *two years* after death of the party entitled. Time of absence from the state without known attachable property in the state is not computed in the limitation. Limitations in case of persons under disabilities begin to run from the removal of the same. New promise must be in writing.

Virginia.—Land east of the Alleghanies, *fifteen years;* west of the Alleghanies, *ten years*. Contracts in writing under seal, *ten years*, not under seal, *five years*. Bonds of indemnity, bonds of executors, administrators, curators, committees, guardians, sheriffs, sergeants, or other fiduciary or public officers, *ten years*. Recognizance of bail in a civil suit, *three years* after the right to sue out execution shall have accrued, omitting such part of the *three years* as the right to sue shall have been suspended by injunction, supersedeas, or other legal process; other recognizance, *ten years*. Articles charged on the store account, *two years;* if upon any other contract, *three years*. Actions for personal injury or death, *one year*. Actions between

partners for settlement, and accounts concerning the trade of merchandise between merchant and merchant, *five years* from cessation of dealings. All other personal actions, *five years*. Acknowledgment of a debt must be in writing. Persons under disabilities may bring actions within the time limited after the removal of their disabilities, provided it be within *twenty years* from the original accrual of the right. Actions failing by abatement, arrest, or reversal of judgment, may be brought again within *one year*. The time of limitation does not run in favor of persons who are absent from the state.

Washington.—Real actions, *ten years*. Judgments, contracts in writing, actions for rents and profits or use and occupation of real estate, *six years*. Actions by an heir or assign, or by a ward or one claiming under him, for the recovery of land sold by an executor, administrator, or guardian as the case may be, *five years;* except that such action may be brought within three years of removal of disability of a ward. Waste or trespass upon real estate, actions for taking, detaining, or injuring personal property, or for the specific recovery thereof; or for injury to the person or rights of another, not specially enumerated, contracts not in writing, relief on ground of fraud, actions against sheriffs, etc., except for escape, statute penalties and forfeitures to party aggrieved, seduction, and breach of promise of marriage, *three years*. Libel, slander, assault and battery, false imprisonment, and penalties to the state, *two years*. Action against officer for escape, and against executors or administrators, *one year*. On a claim rejected by executor or administrator, *three months*. Limitation does not run against parties under disability, until after the removal of the same. Causes of action arising in another state or territory, between non-residents of this state, and barred by law there barred here also. New acknowledgment of promise must be in writing.

West Virginia.—Real actions, *ten years;* persons under disabilities, *five years* after the removal of the same, provided the whole limitation is not more than *twenty years*. Indemnity bonds, bonds of executors, administrators, guardians, sheriffs, or other public officers, and other instruments under seal, awards and contracts in writing not under seal, *ten years*. Other contracts, *five years*. Partnership accounts and accounts between merchant and merchant, *five years* from last dealings. Actions on recognizances other than bail in a civil suit, and judgments, *ten years*. Recognizance of bail in civil suit, *three years*. All other actions, *five years*. Actions on judgments barred where rendered are barred here, and actions or contracts made to be performed in another state and barred there are barred here also. Limitation does not run in favor of a resident of the state during his absence therefrom or while absconding or concealing himself. New acknowledgment or promise must be in writing.

Wisconsin.—Real actions, *twenty years;* persons under disabilities, *five years* after removal of the same. On adverse possession of *ten years* under claims of title under written instrument or judgment is in certain cases a bar. Judgments of courts of record of the State of Wisconsin or of the United States sitting in the state, and sealed instruments, when the cause of action accrues within the state, *twenty years*. Judgments of other courts of record and sealed instruments accruing without the state and actions for damages for flowing land, *ten years*. Other contracts, obligations, or liabilities, including actions on municipal bonds and coupons, judgments of courts not of record, statutory liabilities other than penalties or forfeitures, injury to property, real or personal, injury to person, character, or rights not arising on contract not otherwise provided for, and actions for recovery of personal property or damages for detention, *six years*. Actions against sheriffs, coroners, and constables for acts done in their official capacity, except for escapes, *three years*. Statutory penalties and forfeitures, libel, slander, assault, battery, false imprisonment, and actions for negligently or wrongfully causing the death of another, *two years*. Actions against sheriffs, etc., for escapes, *one year*. Persons under disabilities, except infants, may bring action after the disability ceases, provided the period is not extended more

than *five years*, and infants one year after coming of age; actions by representatives of deceased persons, *one year* from death; against the same, *one year* from granting letters testamentary or of administration. New promise must be in writing. The time of limitation does not run in favor of persons absent from the state.

Wyoming.—Real actions, *ten years*. Bonds of executors, administrators, guardians, sheriffs, and other officers, all bonds required by statute, and causes of action not specially enumerated, *ten years*. Specialties and contracts in writing, *five years*. Contracts not in writing, and statutory liabilities other than forfeiture or penalty, *eight years*, but on all foreign claims, judgments, or contracts contracted or incurred before the debtor became a resident of the territory, actions must be commenced within *five years* after he establishes his residence in the territory. Trespass on real estate, actions for taking, detaining, or injuring personal property, or for the specific recovery of the same, action for injury to plaintiff's rights not arising on contract and not otherwise provided for, *four years*. Libel, slander, assault, and battery, malicious prosecution, or false imprisonment, *one year*. Limitations in personal actions do not run against persons under disabilities until after the removal of the same. Time of defendant's absence from the territory or absconding or concealment is not reckoned. Actions on causes arising out of the territory between non-residents and barred there, cannot be maintained here. New acknowledgment or promise must be in writing.

Abstract of Interest Laws

State	Legal Rate, per cent	Maximum Rate Allowed by Contract, per cent	Rate on Judgments, per cent	Effect on Usury
Alabama.	8	8	8	Forfeit all interest due.
Alaska...	8	12	As provided in instrument.	
Arizona..	6	10	As provided in instrument.	Forfeit all interest that is due on the contract.
Arkansas.	6	10	As provided in instrument. Open accounts 6%.	Forfeit interest.[1]
California	7	12	As provided in instrument. Open accounts 7%.	All interest forfeited and three times interest paid.
Colorado.	8	12[2]	8	No usury law.
Connecticut....	6	12	6	Forfeit interest and principal.

[1] Payments of usurious interest apply to principal.

[2] 12% limit applies only to loans of $300 or less under the Pawnbroker's Act and when assignment of salary or wages is given.

Abstract of Interest Laws—*Continued*

State	Legal Rate, per cent	Maximum Rate Allowed by Contract, per cent	Rate on Judgments, per cent	Effect on Usury
Delaware.	6	6	As provided in instrument.	Forfeit of sum equal to money lent; half to go to person suing and half to county where suit is brought.
District of Columbia.	6	8	6% in the absence of a special contract.	Forfeit of interest.
Florida...	8	10	8	Forfeits all interest. If over 25% charged, both principal and interest forfeited.
Georgia..	7	8	7	Forfeit of interest.
Hawaii...	8	12	6	No recovery of more than 1% per month. Fine $250; 1 year.
Idaho....	7	10	7	Forfeit of interest.
Illinois...	5	7	5	Forfeit of interest. Corporation cannot set up usury defense.
Indiana..	6	8	As provided in instrument to 8%.	Void in excess of legal rate of interest.
Iowa.....	6	8	As provided in instrument. If not stipulated, 6%.	Loss of interest and penalty of 8% to school fund.
Kansas...	6	10	As provided in instrument.	Interest in excess applied to principal. Forfeits interest.
Kentucky	6	6	6	Void as to excess only.
Louisiana.	5	8	5	Forfeit of interest.
Maine....	6	No limit.	6	No penalty for usury except small loans.
Maryland	6	6	6	Forfeit excess interest and legal interest. Corporation cannot set up usury defense.

Abstract of Interest Laws—*Continued*

State	Legal Rate, per cent	Maximum Rate Allowed by Contract, per cent	Rate on Judgments, per cent	Effect on Usury
Massachusetts..	6	No limit.	As provided in instrument.	No usury.
Michigan.	5	7	5	Forfeit of interest.
Minnesota	6	8	As provided in instrument.	Court may declare contract void.
Mississippi.....	6	8	As provided in instrument; if not provided, 6%.	Forfeits all interest. If rate over 20%, principal forfeited also.
Missouri .	6	8	As provided in instrument; if not provided, 6%.	Forfeits interest.
Montana.	8	10	8	Forfeit of double amount of interest.
Nebraska.	7	10	As provided in instrument; not less than 7%.	Forfeit of interest.
Nevada..	7	12	As provided in instrument.	Void as to excess.
New Hampshire.....	6	As provided in instrument.	As provided in instrument; 6% otherwise.	No usury.
New Jersey....	6	6	As provided in instrument.	Forfeiture of interest. Corporation cannot set up usury defense.
New Mexico...	6	10	6% if not provided in instrument.	Forfeits the interest.
New York	6	Demand notes over $5000 with collateral —no limit.	6	Forfeit principal and interest. Corporation cannot set up usury defense.

Abstract of Interest Laws—*Continued*

State	Legal Rate, per cent	Maximum Rate Allowed by Contract, per cent	Rate on Judgments, per cent	Effect on Usury
North Carolina..	6	6	6	Forfeits interest. In case a greater amount has been paid, twice that amount may be recovered.
North Dakota...	6	9	6	All interest forfeited.
Ohio.....	6	8	As provided in instrument. If not, 6%.	Void as to excess.
Oklahoma	6	10	6% unless provided in instrument.	Forfeiture of twice amount of interest.
Oregon...	6	10	As provided in instrument. If not, 6%.	Entire debt forfeited to school fund.
Pennsylvania....	6	6 banks. 7 Com. Mer.	As provided in instrument.	Void as to excess.
Porto Rico.....	6	12	As provided in instrument.	Forfeiture of interest, and penalty of 25% of debt.
Rhode Island....	6	30	As provided in instrument. If not, 6%.	Contract is void.
South Carolina..	7	8	7	No recovery of interest.
South Dakota...	7	10	As provided in instrument.	Forfeiture of interest only.
Tennessee	6	6	As provided in instrument.	Forfeiture of interest above legal rate.
Texas....	6	10	6% if not provided in instrument.	Contract is void.
Utah.....	8	12	As provided in instrument.	Loss of interest above legal rate.

Abstract of Interest Laws—*Continued*

State	Legal Rate, per cent	Maximum Rate Allowed by Contract, per cent	Rate on Judgments, per cent	Effect on Usury
Vermont.	6	6	6	Forfeiture of all interest over 6%.
Virginia..	6	6	6	Forfeiture of all interest above 6%.
Washington....	6	12	As provided in instrument not above 10%; if not provided, 6%.	Loss of all interest.
West Virginia..	6	6	6	Void as to excess only.
Wisconsin	6	10	As provided in instrument.	Void as to excess. Corporation cannot set up defense usury.
Wyoming.	7	10	7% if not provided for in the contract.	Forfeit all interest.

Abstracts from Exemption Laws

ALABAMA

Source.—Code of Alabama, 1923, and Session Laws to date.

Wages.—Wages of resident laborers and employees for personal services to the amount of $25 per month. (Sec. 7887.)

Personal Property.—Church pew and cemetery lot (Sec. 7885) and personal property to the value of $1,000, including past wages, and family pictures and books. (Sec. 7886.) Partnership property is not exempt as part of partner's property. (Sec. 7887.) Right of exemption may be waived by an instrument in writing (Sec. 7960), or it may be waived in any bond or promissory note. (Sec. 7961.) There may be no waiver of certain household furniture and of minimum amounts of specified foods. (Sec. 7962.)

Homestead.—Resident householder may claim homestead and improvements not exceeding 160 acres, and to the value of $2,000. The right survives to his widow and minor children. (Sec. 7882.)

Waiver of Exemption.—Any person by an instrument in writing may waive his right to exemption in any property exempt from levy and sale under execution or other process. (Sec. 7960.)

As to **Personal Property,** the waiver may be made by a separate instrument in writing, subscribed by the party making the same, or it may be included in any bond, bill of exchange, promissory note, or other written contract executed by him. (Sec. 7961.)

As to the **Homestead,** the waiver must be by a separate instrument in

writing, subscribed by the party making the same and attested by one witness; and if such party is a married man, such waiver shall not be valid without the voluntary signature and assent of the wife, shown and acknowledged as her signature and assent to conveyances of the homestead are required to be shown and acknowledged. And if such party is a married woman such waiver shall be executed only in the mode perscribed by Section 8269 for the alienation of her lands. (Sec. 7962.)

When there is an attachment the written evidence of waiver (an affidavit) is provided and filed with the officer, and the officer must indorse on the writ the fact of such waiver and the extent thereof. (Sec. 7964.)

No waiver of exemption in any written instrument shall be held to apply to or include or authorize the levy of an execution or attachment on any of the following property: cooking utensils, cooking stove, table, table ware, chairs, bed and bed clothing in actual use exceeding 100 pounds, lard 50 pounds, meal and flour—not exceeding 10 bushels, or corn or wheat, 10 bushels potatoes, 10 gallons syrup, and one cow and calf to be selected by the debtor for any debt contracted after September 28, 1915, and any levy upon such property is absolutely void. (Sec. 7966.)

ALASKA

Source.—Compiled Laws of 1913 and Session Laws to date.

Wages.—Earnings for services rendered within 30 days before the levy, to the amount of $100, upon filing of affidavit stating the debtor's family's need of such earnings. (Laws 1919, Ch. 8.)

Personal Property.—Books, pictures, and musical instruments owned by any person, to the value of $75; necessary wearing apparel for use by self and family (watches and jewelry over $100, not exempt); tools, implements, team and vehicle, or library necessary to enable any person to carry on trade or profession to the value of $500, and food for the team sufficient for 6 months, specified animals; household goods and furniture to the value of $300, also food for the animals and for the family sufficient for 6 months; church pew. No exemption when suit is for purchase price. (Sec. 1105(2)–(8).)

Homestead.—Must be the actual abode; if rural, 160 acres, and if urban, ¼ acre, to the value of $2,500. (Sec. 1104.)

Waiver of Exemptions.—No provision.

ARIZONA

Source.—Revised Statutes 1913; Session Laws to date.

Wages.—One-half of the earnings of any person for personal services rendered within 30 days before the levy; minor child's wages are exempt except for such debts as were incurred for his special benefit. (Sec. 3302.)

Personal Property.—The following articles are exempt: Bible, church pew, burial lot, necessary household furniture, including sewing machine, stove, rugs; wearing apparel, pictures, provisions for family use for 3 months; tools of mechanic necessary for his trade, the seal and furniture of a notary, the instruments of a professional man and his library and furniture; the papers and books of an abstractor; one watch, bicycle and typewriter; specified animals; camping outfit of prospectors; farming implements of husbandry, also a team and cart; seeds to be planted in the ensuing 6 months; fuel for 6 months; teamsters are allowed 2 animals and a cart; and priest may

claim a cart and animal; implements of printer not exceeding $2,000 and stock to the value of $400; library and apparatus of school; musician's instruments; benefits or insurance to widow or child not exceeding $10,000. No exemption in an action for the purchase of the article. (Sec. 3302.)

Homestead.—Resident head of family may claim homestead exemption to the value of $4,000, which shall include the dwelling house and the land on which situated, or land that the claimant designates, providing it is in one compact body.

Waiver as to homestead must be executed by husband and wife. (Sec. 3288.)

Waiver of Exemptions.—A homestead can be abandoned only by declaration of abandonment or waiver or by a grant thereof or by a permanent removal from the state. Such declaration of abandonment, waiver or grant must be executed (1) by the husband and wife, if the claimant be married; (2) by the claimant alone, if unmarried. A declaration of abandonment shall be effectual only from the time of filing the same for record in the office in which the homestead claim was filed. (Sec. 3293.) A married man shall not sell or lease the homestead, or create any lien thereon, without being joined by his wife. (Sec. 3295.)

No provision on waiver as to personal property.

ARKANSAS

Source.—Digest of the statutes of Arkansas, 1921, and Session Laws to date.

Wages.—Wages not exceeding 60 days are exempt, but such sum, together with other personal property, shall not exceed the constitutional limitation. (Sec. 5546.)

Personal Property.—Resident not head of a family may select personal property to the value of $200, in addition to wearing apparel. (Sec. 5544.) Resident head of family may select personal property for exemption to the amount of $500, and wearing apparel for the family. (Sec. 5545.) No exemption in an action for purchase price of article. (Sec. 5544.)

Homestead.—Resident head of family may claim rural homestead to the extent of 160 acres with improvements (and not less than 80 acres, regardless of their value), or urban homestead of not more than one acre (a minimum of ¼ acre, regardless of value); in either case the value of the homestead not to exceed the value of $2,500. (Sec. 5539.) The wife must join in the execution and acknowledgment of any instrument encumbering the homestead. (Sec. 5542.) There shall be no exemption of the homestead from laborer's or mechanic's liens for improvements, or from taxes or liens against fiduciaries for money collected by them. (Sec. 5539.)

Waiver of Exemption.—"An agreement to waive a homestead right at the time of contracting a debt is void." (36 Ark. 545.) Homestead right is a personal privilege and may be waived by debtor's failure to claim it as prescribed. (70 Ark. 69.)

No conveyance, mortgage or other instrument affecting the homestead of any married man shall be of any validity . . . unless his wife joins in the execution of such instrument and acknowledges the same. (Sec. 5542.)

Homestead may be lost by non-assertion. (70 Ark. 69.)

Sec. 36, Ark. 481.—Exemption not waived by giving delivery bond.

No provision on waiver of personal property exemption.

CALIFORNIA

Source.—Code of Civil Procedure, 1920; Session Laws to date.

Wages.—Earnings for personal services rendered at any time within 30 days next preceding the levy, when necessary for the use of his family residing in the state, but where debts are incurred for necessaries, or were incurred when the debtor had no family residing in the state supported by him, one-half of such earnings is notwithstanding subject to the debt so incurred. (Secs. 690–10.) Wages of seamen not exceeding $300, regardless how earned, are in addition exempt. (Secs. 690–98.)

Personal Property.—Necessary household furniture, pictures, food and fuel for family for three months, specified animals, and piano; farming implements to the value of $1,000, one cart, two wagons and a team, seed to be planted in the ensuing 6 months not exceeding in value $200; horse and cart for crippled person; tools, libraries, office furniture used in making a living; cabin or dwelling house of a miner not over the value of $500, also certain implements used in mining operation not over the value of $500, and a team (when necessary in the business); the boat and net of a fisherman worth not over $500; poultry to the value of $75; shares in household association to the value of $1,000, if no homestead is claimed; food for all animals exempted sufficient for one month; instruments and apparel of seamen; building material to the amount of $1,000 for repairing or improving buildings or mining claim; life insurance benefit to the amount of $500 (and over that on a certain proportion); machinery, tools, and equipment, not in excess of $1,000, for sinking and constructing artesian wells; building and loan association stock, not to exceed $1,000; pension or retirement money received from the State or the United States, whether invested or otherwise; and *money held by the state or any political subdivision thereof, or by any officer or employee thereof, for retirement or pension purposes, or payment of death benefits.*

(Sec. 690; matter in *ITALICS* added by Laws of 1929, Chapter 45.)

No exemption in an action for the purchase price of an exempt article. (Sec. 690.)

Homestead.—Exemption to the value of $5,000 to the head of a family, and the value of $1,000 to any other person.

(In dividing the homestead when it exceeds the value allowed, the plot with the house on it is to be taken last.) (Sec. 1260.)

The instrument by which the homestead is conveyed must be executed and acknowledged by both the husband and wife. (Sec. 1242.)

(As to property from which homestead is to be selected, see Chap. 84, Laws of 1929.)

Waiver of Exemption.—No provision as to waiver of personal property exemption.

Anyone may waive the advantage of a law intended solely for his benefit. But a law established for a public reason cannot be contravened by a private agreement. (Sec. 3513.)

The homestead of a married person cannot be conveyed or encumbered unless the instrument by which it is conveyed or encumbered is executed and acknowledged by both the husband and wife. (Sec. 1242.)

A homestead can be abandoned only by a declaration of abandonment, or a grant thereof, executed and acknowledged (1) by the husband and wife, if married; (2) by the claimant, if unmarried. (Sec. 1243.)

A declaration of abandonment is effectual only from the same time it is filed in the office in which the homestead was recorded. (Sec. 1244.)

Exemption is a personal privilege which may be waived by debtor. (83 Cal. 194; 67 Cal. 395.)

COLORADO

Source.—Compiled Laws of 1921; Session Laws to date.

Wages.—Sixty per cent of the wages due a resident head of a family, at the time of the levy are exempt, but if such wages do not exceed $5 a week, then all such earnings are exempt. (Sec. 5917.) An assignment of wages in order to be valid must state the amount of indebtedness, the name of the employer, the term for which the wages are assigned (not longer than one year), and it must be properly acknowledged.

The statute provides other technicalities requisite to the validity of an assignment. (Chap. 54, Laws of 1929.)

Personal Property.—The necessary wearing apparel of every person is exempt. The head of a family may claim pictures, library, church pew, burial lot, wearing apparel, beds, utensils, household furniture (the latter not over the value of $100), food and fuel necessary for the family for 6 months, tools of trade not over $200, and the implements of a professional man not exceeding $300, working animals to the value of $200, specified animals and food for them sufficient for 6 months. One wagon, etc., and other farm implements not over $50 in value. The tools, implements and stock in trade for the purpose of carrying on a trade not exceeding $300 in value are exempt. No exemption in an action on the purchase price, or for taxes. (Sec. 5914.) Pensions are exempt. (Sec. 5918.)

Homestead.—Every resident householder shall be entitled to a homestead not exceeding in value the sum of $2,000 if actually occupying the same. The word "homestead" must be entered in the margin of his record title and signed by the owner or a sworn statement made that he is the owner. (Sec. 5925.)

Waiver of Exemptions.—That nothing in this act shall be construed to prevent the owner and occupier of any homestead from voluntarily mortgaging or otherwise conveying the same; provided, no such mortgage or other conveyance shall be binding against the wife or any married man who may be occupying the premises with him, unless she shall freely and voluntarily, separate and apart from her husband, sign and acknowledge the same, and the officer taking the acknowledgment shall fully appraise her of her rights and the effect of signing the said mortgage or other conveyance; and provided further, that if the owner of said homestead be the wife of any married man who may be occuping the premises with her no such mortgage or other conveyance shall be binding against said husband unless he sign and acknowledge said mortgage or other conveyance. (Sec. 5929.)

No provision on personal property waiver.

Where a debtor waives the benefit of exemption laws, in a note, it is void as against public policy. (79 C. 537, 246; p. 789.)

CONNECTICUT

Source.—General Statutes 1918; Session Laws to date.

Wages.—Exemption of $15 for personal services, including wages due to minor child (no exemption where debt is for board, or rental where it does not exceed $25).

Sick benefits and insurance on exempt articles are exempt. (Sec. 5945.)

Personal Property.—The following property of any individual is exempt: His necessary apparel, bedding and household furniture, specified animals of limited value, pension from the United States, implements of his trade, his library not exceeding $500. The following property of the head of a family is exempt; Specified quantities of enumerated foods and fuels; a doctor's

horse not over the value of $200, and buggy; bicycle, boat used in getting clams, not over the value of $200; one sewing machine, church pew, and burial lot. (Sec. 5943.)

In execution against a partnership only that property can be levied on which was mentioned in the complaint. (Sec. 5948.)

Husband's interest in wife's estate is exempt during her life except for debts made in support of her or issue. (Sec. 5944.)

Homestead.—Any person owning and actually occupying as a dwelling or as a dwelling and business, may execute and record a declaration of his intention that it be a homestead.

It shall be exempt to the extent of $1,000. The release of a homestead shall be executed and recorded like a deed, and the husband or wife of the owner must join in the release.

There cannot be exemption in more than one dwelling at one time. (Sec. 5127.)

Waiver of Exemption.— . . . Any homestead right of exemption may be released as to the whole or any part of the property so exempted, provided the husband or wife, if any, of the owner join in the declaration of the release; the husband or widow may release his or her right of occupation in any such property and the guardian of any minor child may, with the consent of the court of probate, release the right of occupation of such child in any real estate. All such releases shall be executed and recorded like deeds of land. (Sec. 5127.)

No provision as to personal property waiver.

DELAWARE

Source.—Revised Code, 1915, and Statutes to date.

Wages.—Ninety per cent of wages of any person residing in New Castle County shall be exempt, except where the debt is for board or lodging of not exceeding $50, exclusive of cost. The non-exemption of ten per cent is only to be made in cases of debt incurred for the necessities of life. Only one attachment of wages may be made in one month. (Sec. 4331.)

Personal Property.—Every person residing in this state may claim exempt a Bible, library, church pew, burial lot, all the wearing apparel of debtor and family, and the tools necessary for carrying on business not exceeding in value $75 in New Castle and Sussex counties, and $50 in Kent county; one sewing machine, and all leased pianos when notice of the lease is given to the landlord. (Sec. 4321.) Every resident head of the family in New Castle and Kent counties, in addition to the above, may claim other personal property not exceeding the value of $200 in New Castle and $150 in Kent, the articles to be selected by the debtor. No exemption in the case of laborer's or mechanic's liens, or from taxes. (Sec. 4322.) The husband and wife jointly may make any waiver of any of the foregoing provisions. (Sec. 4330.)

Homestead.—No provision.

Waiver of Exemption.—Any husband and wife jointly may make any waiver of any of the provisions of Section 2–10, inclusive, of this chapter. (Personal property.) (Sec. 4330.)

DISTRICT OF COLUMBIA

Source.—Code of Law of District of Columbia, 1924, and Session Laws to date.

Wages.—Earnings shall be exempt, not to exceed $100 a month of all actual residents of District of Columbia who provide for the support of a family in the District, for two months next preceding the issue of the writ.

Personal Property.—Estates at will or by sufferance shall be chattel interests, but shall not be liable as such to sale under execution. (Sec. 1014.) Resident head of family or householder may claim as exempt all wearing apparel, beds, household furniture, stoves, cooking utensils, etc., not exceeding the value of $300; provisions for three months' support, whether provided or growing; fuel for three months; mechanic's tools and instruments of trade or business amounting to $200, and $200 worth of stock. Library and implements of a professional man are exempt to the value of $300, and his vehicle and horse are exempt. Family pictures and library not exceeding $400 are exempt. Specified animals are exempt. In an action by servants, laborers or clerks for wages, there shall be no exemption, except for apparel, beds, and furniture. (Sec. 1105.) No waiver unless signed by the debtor's wife. (Sec. 1106.)

Homestead.—No provision.

Wavier of Exemption.—No provision.

FLORIDA

Source.—Revised General Statutes, 1920; Session Laws to date.

Wages.—No levy shall be made on any money due to any person who is head of a family residing in this state when it is for personal labor or services. The claimant must make an affidavit stating such facts. (Sec. 3885.)

Personal Property.—The resident head of a family may claim $1,000 worth of personal property. (Art. X, Constitution, Sec. 1.) The claimant should make an inventory of the whole of his personal property, stating the correct value thereof, and make an affidavit as to its correctness. He should state that which he claims exempt, and deliver the papers in duplicate copies to the officer within 24 hours; the creditor must file contest within 24 hours after receipt of the inventory, and if he does not the exempt property is released. (Sec. 3880.)

Homestead.—Resident head of a family may claim 160 acres in the country or one-half an acre in the city, and the improvements thereon. No exemption in action for taxes, assessments, purchase price, or debt for the erection or repair thereof, or for the labor performed on the same. (Constitution, Art. X, Sec. 1.) No homestead shall be reduced in area on account of its being subsequently included in an incorporated city or town without the consent of the owner. (16 Sec. 5.) A statement of the real property exempt must be signed and recorded in the office of the county judge, but if this has not been done the debtor may notify the officer making the levy. (Sec. 3875.)

Waiver of Exemption.—(Article 10, Section 4, Constitution.) Nothing in this article shall be construed to prevent the holder of a homestead from alienating his or her homestead so exempted by deed or mortgage duly executed by himself or herself, and by husband and wife, if such relation exists, nor if the holder be without children, to prevent him from disposing of his or her homestead by will in a manner prescribed by law.

As to personal property exemption, the head of the family is left by the Constitution with the unrestricted right to dispose of it by will, to take effect upon his death, or to alienate it absolutely during his lifetime. (39 Fla. 333.)

The homstead exemption cannot be waived by stipulation in a note or in any other way than by a valid mortgage or conveyance. (20 Fla. 558.)

GEORGIA

Source.—Georgia Code, 1926; Supplement, 1928.

Wages.—The wages of all persons to the amount of $1.25 per day of their daily, weekly, or monthly wages and on 50 per cent of the excess, whether in the hands of the employee or not, are exempt. (Sec. 5298.)

Personal Property.—Every head of a family, guardian of minor children, or aged persons having others dependent upon them, may claim realty or personalty or both to the aggregate of $1,600. No exemption in an action for taxes, purchase price, for labor thereon, for material furnished or for the removal of encumbrance thereon. (Sec. 3377.) Under short homestead every head of a family may claim exempt: fifty acres of land and 5 additional acres for each child under 16, including a dwelling house, if the value of the house and land does not exceed $200, providing that it is not in the town limit, and that it be used for agricultural purposes, or in lieu of the above land, real estate in a town not exceeding $500 in value; specified animals; $50 worth of provisions and $5 worth additional for each child; specified grains; one table and necessary chairs, and other household furniture not exceeding $150, ordinary cooking utensils, bed and bedding sufficient for the family; common tools of trade of self and wife; wearing apparel of self and family; Bible and school books; library of professional men; family portraits and sewing machine. (Sec. 3416.) No money shall be included in the personalty exemption. (Sec. 3391.) The debtor shall have power to renounce in writing the exemption except as to wearing apparel, and not exceeding $300 worth of furniture, which property may be sold by the debtor and his wife jointly with the sanction of the court, the proceeds to be reinvested. (Sec. 3413.)

Homestead.—Constitutional limitation on real or personal property or both is $1,600. If it is realty it need not be contiguous. (Art. IX, Sec. 1.)

Waiver of Exemptions.—Any debtor may, except as to wearing apparel and $300 worth of household and kitchen furniture and provisions, waive or renounce his right to the benefit of the exemption provided for by the constitution and laws of this state, by a waiver, either general or specific, in writing, simply stating that he does so waive or renounce such right, which waiver may be stated in the contract of indebtedness or contemporaneously therewith or subsequently thereto in a separate paper. (Sec. 3413.)

A waiver of all homestead rights, in an application for a general line of credit, is not effectual to bar the debtor's right to homestead as against a debt thereafter contracted. (134 Ga. 835.)

A waiver of homestead in a requested statement as to financial condition was made contemporaneously with the offer to buy and its acceptance and was a valid contract of waiver. (139 Gal. 365.) In case of such waiver and the levy of execution it shall be the right of the debtor to select as free from levy, $300 worth of household and kitchen furniture and provisions. (Sec. 3414.)

There is no true homestead in Georgia, but under this section (3416) there is a direct exemption of property without regard to residence or home, realty or personalty, and though such exemption may be waived before setting apart, after setting apart of exempt property it cannot be aliened or incumbered by the debtor. (5 Fed. (2) 326.)

HAWAII

Source.—Revised Laws of Hawaii, 1925.

Wages.—One-half of the wages due every laborer or person working for wages shall be exempt. (Sec. 2460 (7).)

Personal Property.—The following personal property shall be exempt: all necessary furniture, all wearing apparel, linens and provisions for the family sufficient for 3 months; farming implements to the value of $500, a team and wagon, and vehicle for crippled person; the tools of a mechanic necessary for his trade, the instruments of a doctor, dentist or surveyor necessary for his profession, and the necessary furniture; the office furniture of an attorney, minister, judge; equipment of a stenographer; the musical instruments of a teacher; a bicycle; the boats and equipment of a fisherman; team and wagon or other vehicle of a teamster, and the vehicle of a doctor or minister, the nautical instruments of a seaman; all books, maps, etc., with the devices holding them (if they are not kept for sale). The proceeds of sale or insurance from exempt articles is exempt.

No exemption in an action for the purchase price, taxes, fines, or mortgage. (Sec. 2460.)

Homestead.—Head of family may claim a piece of land not to exceed one acre and the building thereon, provided the value thereof does not exceed $1,000. No exemption from material man's or mechanic's lien. (Sec. 2459.)

Waiver of Exemptions.—No provision.

IDAHO

Source.—Idaho Compiled Statutes, 1919; Session Laws to date.

Wages.—Seventy-five per cent of the earnings for personal services rendered at any time within 30 days next preceding the levy of execution, is exempt when it appears by affidavit that they are necessary for the use of debtor's family.

No exemption shall be allowed in excess of 50 per cent upon a debt for necessaries. The exemption shall in no case exceed $100. (Sec. 6920–7.)

Personal Property.—Actual resident of the state may claim chairs, tables, and books to the value of $200; necessary household furniture, not exceeding the value of $300, also wearing apparel, pictures; provisions actually provided for the individual or family use sufficient for 6 months; specified animals, farming utensils not exceeding $300, 2 teams and their harness, food for the animals for 6 months, one wagon; a water right not to exceed 160 inches of water used for the irrigation of lands cultivated by him, and crops growing or grown on 50 acres of land, not over the value of $500; tools of mechanic not exceeding the value of $500; the instruments of doctors and dentists and the libraries of professional men; the cabin of a miner not exceeding the value of $500, also tools not over the value of $200, and saddle, pack animal and equipment not over the value of $250, the team and truck of a teamster; stock to the extent of $1,000 in a homestead association if no homestead is claimed; all money accruing from any life insurance on the life of the debtor to an amount represented by an annual premium of not exceeding $250. (Sec. 6920.)

Homestead.—Head of family may claim dwelling house and land on which it is situated (also the proceeds of the sale thereof, or the insurance therefrom) to the value of $5,000; person other than the head of a family to the value of $1,000. (Secs. 5437, 5460.) A declaration of the homestead must be executed and acknowledged in the same manner as a conveyance of real property, and be filed for record in the county where the land is situated.

(Secs. 5462, 5463, 5464.) The homestead cannot be encumbered unless the instrument so encumbering is executed and acknowledged by both husband and wife. (Sec. 5442.) There is no exemption from debts secured by mechanic's, laborer's, material men or vendor liens or by mortgages or from judgments obtained before the filing of the declaration. (Sec. 5441.)

Waiver of Exemptions.—The homestead of a married person cannot be conveyed or encumbered unless the instrument by which it is conveyed or encumbered is executed and acknowledged by both husband and wife. (Sec. 5442.)

A homestead can be abandoned only by a declaration of abandonment, or a grant or conveyance thereof executed and acknowledged (1) by the husband and wife, if the claimant is married, (2) by the claimant if unmarried. (Sec. 5443.)

A declaration of abandonment is effectual only from the time it is filed in the office in which the homestead was recorded. (Sec. 5444.)

(No provision on waiver of personal property exemption.)

ILLINOIS

Source.—Smith-Hurds Ill. Revised Statutes, 1927.

Wages.—Salary for resident head of family residing with them to the amount of $15 per week shall be exempt. (Ch. 62, Sec. 14.)

Personal Property.—Every person may claim necessary wearing apparel, Bible, school books, family pictures, and in addition $100 worth of property to be selected by the debtor, and when he is a head of a family and resides with them, $400 worth of other property, provided that such selection shall not be made from any wages due to the debtor; for one year after the receipt thereof all pension money; the proceeds of property exempt is exempt.

(Ch. 52, Sec. 13.) Benefits to county employees from their pension fund are exempt. (Call. Ill. Stat. Ann., Ch. 34, Sec. 188 (61).)

There shall be no exemption in any action by servants for wages. (Ch. 52, Sec. 16.) Debtor shall within 10 days after execution served, file schedule of all his personal property including money due him in the court of the execution or deliver it to the officer. (Ch. 52, Sec. 14.)

Homestead.—Every householder having a family shall be entitled to an estate of homestead to the extent in value of $1,000, in the farm or lot of land and buildings thereon, owned or leased, and occupied by him as a residence; homestead right to survive to his widow and minor children.

The proceeds of the sale of the homestead to the extent of $1,000 are exempt for one year. Insurance on homestead is exempt. There shall be no release or waiver of the homestead unless it is executed and acknowledged by the husband and wife, as though it were a conveyance of real estate. (Ch 52, Sec. 1–7.)

Waiver of Exemptions.—No assignment of any salary or any wages, earned or to be earned, given to secure any loans made under this act shall be valid, unless in writing signed by the borrower; nor shall such assignment be valid unless given to secure an existing debt or one contracted simultaneously with its execution. (Ch. 74, Sec. 30.)

No release, waiver, or conveyance of the estate so exempted shall be valid unless the same is in writing, subscribed by said householder and his or her wife or husband, if he or she have one, and acknowledged in the same manner as conveyances of real estate are required to be acknowledged, or possession is abandoned or given pursuant to the conveyance. Provided that

where a conveyance is made by a husband who is such householder as grantor, to his wife, or by a wife who is such householder as grantor to her husband, such conveyance shall be effectual to pass the title expressed therein to be conveyed thereby, whether the grantor in such conveyance is joined therein by such wife or husband as the case may be or not. And provided further in all cases where such release, waiver or conveyance shall be taken by way of mortgage or security, the same shall be operative only as to such specific release, waiver, or conveyance, and when the same includes different pieces of land. (Ch. 52, Sec. 4.)

A clause in the promissory note expressly waiving the "benefit of all laws exempting real or personal property from levy and sale," being contrary to public policy, is inoperative, and confers no right to levy upon and sell personal property which is exempt. (82 Ill. 147, 1876.)

INDIANA

Source.—Burns Ann. Ind. Statutes, 1926, and Session Laws to date.

Wages.—The wages of a householder shall be exempt not exceeding $25. (Sec. 985.)

Personal Property.—$500 worth of property (Sec. 769), either real or personal (Sec. 770), is exempt, when owned by a resident householder. No exemption from lien of mechanics, etc., purchase price, or taxes. Wife may elect the exemption when husband is absent. (Sec. 790.)

Homestead.—See personal property.

Waiver of Exemptions.—The assignment of future wages, to become due to employees from persons, companies, corporations . . . affected by this act is hereby prohibited, nor shall any agreement be valid that relieves such companies, etc., from the obligation to pay weekly the full amount due or to become due, to any employee in accordance with this act. (Sec. 9352.)

Any person, company . . . loaning money directly or indirectly to any employee or wage earner upon the security of, or in consideration of, any assignment of the wages or salary of such employee or wage earner, shall be defined and held to be a wage broker and subject to the provisions of this act. (Sec. 9356.)

No assignment of his or her wages or salary by any employee or wage earner to any wage broker, or any other person for his benefit, shall be valid and enforceable unless it be for a fixed and definite part of the wages or salary earned or to be earned during a period not exceeding 30 days immediately following the date of the assignment, any assignment which shall be post-dated or dated on any other date than that of its actual execution shall be paid. (Sec. 9357.)

A debtor cannot waive by contract his right to claim the benefit of the exemption laws. (85 Ind. 565; 121 Ind. 366; 100 Ind. 349; 1 App. 530. 104 N. E. 60.)

IOWA

Source.—Code of Iowa, 1927, and Session Laws to date.

Wages.—The earnings of a debtor who is a resident of the state and the head of a family, for his personal services or those of his family at any time within ninety days next preceding the levy are exempt. (Sec. 11763.)

Personal Property.—Exempt to the resident head of a family: All wearing apparel of himself and family suitable to their condition, and trunks to contain them; all private libraries, Bibles, pictures, musical instruments, etc., not

kept for the purpose of sale; church pew, burial lot not exceeding one acre; specified animals and food for them for 6 months; one bed and necessary bedding for every two members in the family, cloth not over 100 yards manufactured by the debtor, household furniture not exceeding the value of $200, instruments of domestic labor kept for actual family use, provisions and fuel for family for 6 months; the proper tools, instruments, or books of the debtor, if a farmer, mechanic, surveyor, clergyman, lawyer, physician, teacher or professor. If debtor is a physician, public officer, farmer, teamster, or other laborer, he may claim a vehicle and team; a printer may claim a printing press, and material not exceeding $1,200; poultry to the value of $50; if a seamstress, a sewing machine is exempt. Where a debtor has none of the exempt items, but his wife, who is also a debtor, has such items, she is allowed to claim them exempt. A woman not the head of a family may claim one sewing machine and poultry to the value of $50. (Sec. 11760, (1–22) as amended by Chap. 256, Laws of 1929.) Pension money is exempt to any debtor. (Sec. 11761.) Workmen's compensation payments are exempt. (Sec. 11766.)

Person unmarried and not the head of a family, and nonresident persons shall have exempt their wearing apparel and trunks. (Sec. 11767.) The head of a family who attempts to leave the state shall have exempt only the ordinary wearing apparel of himself and family and other property to the value of $75. (Sec. 11768.) The rights of exemption are waived by failing to designate the property in writing when required to do so by the officer. (Sec. 11757.) There shall be no exemption in an action for the purchase price of an article. (Sec. 11759.)

Homestead.—If within a city it must not exceed one-half acre in extent, otherwise it must not take in the aggregate more than 40 acres, but if in either case its value is less than $500 it may be enlarged until it reaches that amount. (Secs. 10135, 10136.) It must not embrace more than one dwelling house, but a shop thereon actually used for the debtor's business and not exceeding the value of $300 is allowed in addition. (Sec. 10137.) A description of the homestead with the plat shall be filed and recorded in the homestead book within 10 days after service of execution. (Sec. 10139.) No encumbrance of the homestead shall be valid unless the husband and wife join in the execution of the instrument. (Sec. 10147.)

The homestead shall not be exempt from debts contracted prior to its acquisition, or for debts for labor or materials furnished in the improvement thereof. (Sec. 10155.)

Waiver of Exemptions.—None as to personal property except as in the outline. (Failure to select exempt property on demand by officer levying.)

No change of the entire homestead made without the concurrence of the husband or wife shall affect his or her rights or those of the children. (Sec. 10141.)

No conveyance or encumbrance of or contract to convey or encumber the homestead if the owner is married is valid unless the husband and wife join in the execution of the same joint instrument, and the instrument sets out the legal description of the homestead; provided, however, that where the homestead is conveyed or encumbered along with or in addition to other real estate it shall not be necessary to particularly describe or set aside the tract of land constituting such homestead, whether the homestead is exclusively the subject of the contract or not, but such contracts may be enforced as to real estate other than the homestead at the option of the purchaser or encumbrancer. (Sec. 10147.)

Subject to the rights of the surviving husband or wife, the homestead may be devised like other real estate of the testator. (Sec. 10148.)

No encumbrance of personal property which may be held exempt from execution by the head of the family, if a resident of this state, shall be of any validity as to such exempt property only, unless the same be by written instrument, and unless the husband and wife, if both be living, concur in and sign the same joint instrument. Encumbrances on the property sold, given to secure the purchase price, need only be signed and acknowledged by the purchaser. (Sec.10013.)

No sale or assignment, by the head of a family, of wages, whether the same be exempt from execution or not, shall be of any validity whatever unless the same be evidenced by written instrument and if married, unless the husband, and wife sign and acknowledge the same joint instrument before an officer authorized to take acknowledgements. (Sec. 9454.)

No assignment of or order for the payment of any salary, wages, commissions, or other compensation for services, earned, or to be earned, or given to secure any such loans shall be valid unless such loan is contracted simultaneously with its execution, nor shall any such assignment or order or any chattel mortgage or other lien on household furniture then in the possession and use of the borrower be valid unless in writing signed and acknowledged in person by the borrower; nor, if the borrower be married, unless signed and acknowledged in person by both husband and wife. (Sec. 9427.)

A simple waiver of the benefit of exemption laws made contemporaneously with the contract or debt is contrary to public policy and will not entitle the creditor, in case of failure to pay, to levy an execution under a judgment thereon upon exempt property against defendant's objections. (20–376.)

KANSAS

Source.—Revised Statutes of Kansas, 1923; Session Laws to date.

Wages.—Ninety per cent of the resident debtor's salary earned within three months next preceding the attachment, except court costs not to exceed $4, shall be exempt from execution when it is shown necessary for the support of his family, and if the debtor be sick for two weeks the act shall not apply for two months. (Sec. 60–3495.)

Personal Property.—Any resident may claim church pew, burial lot, wearing apparel, necessary tools and instruments of any mechanic, miner or other person and also stock in trade to the value of $400; the library, implements, and office furniture of any professional man. (Secs. 60–3504, 60–3505.)

Resident head of a family may claim in addition musical instruments, pictures, school books, wearing apparel of his family, and all beds and bedding used by the family and necessary cooking utensils, and other household furniture not enumerated in the statute to the value of $500; specified animals and necessary food for them for one year; farm utensils not exceeding $300, and fuel on hand necessary for the family use for one year. (Sec. 60–3504.) No exemption in an action for taxes or on laborer's, mechanic's or servant wages. (Sec. 60–3506.) Pension money received within 3 months of the attachment is exempt if necessary for family. (Sec. 60–3508.)

Homestead.—To the extent of 160 acres of farming land, or one acre in a city, occupied as a residence together with all improvements, shall be exempt, except for taxes, purchase money obligations or debts for improvements. It shall not be encumbered without the consent of the husband and the wife. (Sec. 60–3501.) Debtor must notify the officer in writing what he regards as his homestead. (Sec. 60–3502.)

Waiver of Exemptions.—A tenant may waive, in writing, the benefit of the exemption laws of this state for all debts contracted for rents. (Sec. 67–530.)

(Sec. 60–3503.) (No action may be brought on a contract to sell a homestead unless the wife joins in the contract.)

It shall be unlawful for either husband or wife (where that relation exists) to create any lien, by chattel mortgage or otherwise, upon any personal property owned by either or both of them, and now exempt by law to resident heads of families from seizure and sale upon any attachment, execution or other process issued from any court in this state without the joint consent of both husband and wife; and from and after the time when this act shall take effect no such mortgage of personal property shall be valid unless executed by both husband and wife. Provided, that this act shall not be construed to invalidate any such mortgage or other lien except so far as relates to the exempt property covered thereby. (Sec. 58–312.)

. . . The homestead shall not be alienated without the joint consent of husband and wife. (Sec. 60–3501.)

A waiver of the exemption by the lessee in a lease does not operate as a waiver of exemption created by G. S., Sec. 4589, which exempts the wages of a debtor having a family dependent on his earnings for support, since the latter exemption is in the interest of his family and he has no power to waive it. (50 Kans. 424.)

A chattel mortgage on exempt property given by the owner thereof without the consent or signature of his wife is invalid. (70 P. 339.)

KENTUCKY

Source.—Carrol's Kentucky Statutes, 1922; Supp. 1926; Session Laws to date.

Wages.—Exemption of 90 per cent of wages of every person earning $75 or less per month and if earnings are in excess of $75, then $67.50 is exempt. (Sec. 1697.)

Personal Property.—Enumerated farm utensils and stock; a table, and books not over the value of $75, all wearing apparel; sufficient provisions including breadstuffs and food for the family for one year, washing apparatus to the value of $75, sewing machine, family pictures, stove and cooking utensils to the value of $25 are exempt. (Sec. 1697.)

Mechanic's tools to the value of $100 (Sec. 1699), and professional libraries to the value of $500, are exempt, and each doctor, minister and lawyer is allowed a horse and buggy. (Sec. 1700.)

Homestead.—Resident head of family may claim homestead exemption of not over $1,000, except as to debts contracted prior to the purchase of the land or for improvements or mortgages. (Sec. 1702.) No waiver thereof shall be valid unless executed, acknowledged and recorded by the debtor and his wife in the same manner as deeds. The right of homestead shall survive to the wife and minor children. (Sec. 1706.)

Waiver of Exemptions.—No mortgage, release, or waiver of such exemption shall be valid unless the same be in writing, subscribed by the dependant and his wife, and acknowledged and recorded in the same manner as conveyances of real estate; and such exemption in favor of an execution debtor, or one against whom judgment has been rendered, shall continue after his death for the benefit of his widow and children, but be estimated in allotting dower. (Sec. 1706.)

Debtor may sell exempted property, but an agreement in a note to waive the exemption laws is not binding. (10 Bush 156.)

LOUISIANA

Source.—Constitution and Statutes of Louisiana, 1920; Session Laws to date.

Wages.—Wages and salary are exempt from seizure and garnishment to the amount of $75, or as to one-half thereof if they amount to over $150 and less than $250 per month.

Everything in excess of $250 is subject to seizure and garnishment in addition to the one-half of the first $250. (Laws 1928, Act No. 115.)

Personal Property.—Linen and clothes belonging to the debtor or his wife, bed and bedding, the tools, instruments and books necessary for the exercise of his trade or profession, the use, habitation and usufruct of the estate of a minor child, the dotal property, stove, tableware, dining table and chairs, wash tubs, smoothing irons, family portraits, and musical instruments, are exempt. (Page 872.) The Constitution includes in the homestead maximum of $2,000, specified stock, farm implements and provisions. (Art. XI, Sec. 1.) There shall be no exemption in any action for the following: Purchase price of the article, labor, money and material furnished for building or improvements, liabilities incurred in any public office, or as fiduciary or attorney for money collected, taxes, or for rent. (Sec. 2, Ib.)

Homestead.—When bona fide owned and occupied by a head of a family or one having dependents, a homestead to the extent of 160 acres, and buildings and appurtenances, whether rural or urban, are exempt to the value of $2,000, deducting the value of the property owned and enjoyed by the wife. The right of the homestead survives to the widow or minor children. (Constitution, Art. XI, Sec. 1.) Homestead may be waived by written waiver thereof signed by the wife, if debtor is married, and it shall be recorded in the mortgage records. The waiver has effect from the time of recording. (Sec. 3.)

Waiver of Exemptions.—The right to sell any property that is exempt as a homestead shall be preserved; but no sales shall destroy or impair any rights of creditors therein. Any person entitled to a homestead may waive same, in whole or in part, by signing a written waiver thereof; provided, if such person be married, and not separate from bed and board from the other spouse, then the waiver shall not be effective unless signed by the latter; and all such waivers shall be recorded in the mortgage records of the parish where the homestead is situated. Such waiver may be either general or special and shall have effect from the time of recording. (Art. XI, Sec. 3.)

The homestead right cannot be contractually waived, renounced, or destroyed otherwise than by sale or its equivalent. (4 So. 564.)

MAINE

Source.—Revised Statutes of Maine, 1916; Session Laws to date.

Wages.—Except where the debt was for necessaries, the debtor shall not be required to assign any sums due him as wages for his personal labor earned within one month next preceding the date of disclosure and not exceeding $20. In all cases $10 shall be exempt. (Ch. 91, Sec. 55 (VI).)

Personal Property.—Debtor's apparel, household furniture necessary for himself and family not over $100, one bed and necessary bedding for every two persons, family portraits, Bibles, school books being used, library to the value of $150, a church pew, stoves (a limited quantity of provisions and fuel) are

exempt. Tools necessary for trade, and stock therefor to the value of $50, sewing machine to the value of $100; team of working cattle to the value of $300, and hay for the winter for them, harness to the value of $20, and a sled. (Specified stock and farm implements are exempt.) Personal property of a copartnership is exempt from attachment for the debt of copartner. (Ch. 86, Sec. 64.) Benefits from casualty insurance are exempt. (Ch. 53, Sec. 169.) A burial lot not exceeding one-fourth acre is exempt. (Ch. 21, Sec. 6.) Life and accident insurance policies and the money due thereon are exempt when the annual cash premium paid does not exceed $150. (Ch. 53, Sec. 143.) Two shares in building and loan associations are exempt. (Ch. 52, Sec. 101.) Workmen's compensation claims are not liable for debt. (Ch. 59, Sec. 24.)

Homestead.—A lot of land and dwelling house thereon of a householder in actual possession thereof is exempt to the value of $500, unless the debtor owns a grant from the state which is exempt to the value of $1,000. The homestead right shall survive to the widow and children. (Ch. 86, Sec. 66.)

Waiver of Exemptions.—No provision.

MARYLAND

Source.—Annotated Code of Maryland (Bagby, 1924); Session Laws to date.

Wages.—No attachment on wages not yet due; wages to the sum of $100 shall always be exempt.

This provision shall not apply to judgments for foodstuffs, in which case 10 per cent of the wages shall be bound until the judgment has been satisfied. No subsequent attachment shall issue until the previous one has been satisfied. More than one garnishment shall not be necessary; the court is to determine the installments in which the debt is to be paid. (Art. 9, Sec. 33, as amended by Ch. 265, Laws of 1929.) The same is true of non-residents. (Sec. 34.)

Personal Property.—Constitutional limitation forbidding statute exempting more than $500 worth of personalty. (Const. 3, Sec. 44.) Residents may claim $100 in property, whether the same consists of money, lands or goods, as well as all money payable in the nature of insurance. (Ib. Art. 83, Sec. 8.) All wearing apparel, mechanical textbooks, books of professional men, all tools or other instruments moved or worked by hand or foot necessary for a trade or profession, in addition to property before mentioned, shall be exempt. (Ib. Sec. 11.) No exemption in action on vendor's or mechanic's lien, on a mortgage, or for debts contracted in the execution of any building, or for taxes. (Ib. Sec. 13.) An examination may be waived. (Ib. Sec. 14.) The separate property of a married women shall be liable for the debts of her husband, but the passing of the property from one spouse to the other shall not be valid if made in prejudice of the rights of creditors (claiming within three years thereafter). (Ch. 398, Laws of 1929.)

Homestead.—No provision.

Waiver of Exemptions.—The debtor may waive his exemption and in order to have benefit of it he must actively interpose. (57 Md. 317.)

Whenever any defendant in an original contract or cause of action or by a subsequent contract in writing shall waive his claim to said exemption, the court or the justice of the peace entering a judgment upon any such contract or cause of action shall enter or cause to be entered among the docket entries of the same "right to exemption waived," or words to that effect, and a like entry shall be made on the back of any execution issued on said judgment; provided, however, that if such waiver shall be made as above stated and said

entry shall be omitted, such defendant shall be estopped from demanding such exemption unless said court or justice of peace, for sufficient reasons, shall enter among the docket entries of the case that said waiver was and is void. (Personal property.) (Art. 83, Sec. 14.)

MASSACHUSETTS

Source.—General Laws of Mass., 1921, and Cumulative Supplement, 1927.

Wages.—Wages to the amount of $20 shall be exempt from attachment except when the writ states that the debt is for necessaries, in which case $10 shall be exempt. (Ch. 246, Sec. 28.)

Personal Property.—Necessary apparel of the debtor and family, one bed, and necessary bedding for every two persons, a stove and fuel to the value of $20, other household furniture to the value of $300, Bibles, school books, and library to the value of $50; specified animals and provisions; tools, implements and fixtures to the value of $100, material and stock for his trade to the value of $100; provisions procured for the family to the value of $50; a pew; boat and tackle of fisherman to the value of $100; equipment of a soldier; rights of burial; sewing machine to the value of $100. Stock in coöperative association to the value of $20. (Ch. 235, Sec. 34–(1–13).)

Homestead.—A householder who has a family may claim a homestead to the extent of $800 in the land and buildings possessed by lease or otherwise, except in an action for the purchase price thereof, or for debts contracted previous to the acquisition of the estate, or a court decree for support of family, or sale for the rent due. The deed of conveyance must state it is a homestead and be recorded in the registry of deeds. (Ch. 188, Sec. 1.) The survivors shall have a right to the homestead. (Ib. Sec. 4.) There shall be no waiver of homestead unless the debtor's wife joins therein. (Ib. Sec. 7.)

Waiver of Exemptions.—No conveyance of property in which an estate of homestead exists, and no release or waiver of such an estate shall convey the part so held and exempted or defeat the right of the owner or of his wife and children to a homestead therein, unless such conveyance is by a deed in which the wife of the owner joins for the purpose of releasing such right in the manner in which she may release her dower, or unless . . . but a deed duly executed without such release shall be valid to pass, according to its terms, any title or interest in the property beyond the estate of the homestead. (Ch. 188, Sec. 7.)

No assignment of wages to be earned in the future to secure a loan of less than $300 shall be valid against the employer unless he accepts it and it has been filed for record. (Ch. 154, Sec. 2.)

No assignment of future wages other than one subject to the preceding section shall be valid for a period exceeding two years from the making thereof, nor unless to secure a debt contracted prior to or simultaneously with the execution of said assignment. (Sec. 3.)

No provision on personal property.

MINNESOTA

Source.—Mason's Minnesota Statutes, 1927; Quarterly Pamphlet, Feb., 1928.

Wages.—Wages due to resident debtor not exceeding $35 for services rendered within 30 days of the execution, and the earnings of a minor child

except when the liability was for the special benefit of the child are exempt. (Sec. 9447 (16–17).)

Personal Property.—The following are exempt: Bible, pictures, school books, and musical instruments of the family, church pew, burial lot, all wearing apparel of debtor and family, household furniture not exceeding $500 in value, specified animals (Ch. 272, 1927) and food for them for one year; farm utensils not over the value of $300, provisions and fuel for family for one year, tools of mechanic, miner or other person for the purpose of carrying on his trade, and in addition thereto stock in trade to the value of $400; the library and implements of a professional man; tools of printer of a newspaper, to the value of $2,000, and stock in trade of not over $400; one watch, sewing machine, typewriter and bicycle; necessary seed of limited quantity and kinds, library and apparatus of schools, insurance from exempt property, life insurance money to the widow or child not to exceed $10,000, fire and police department benefits. (Sec. 9447 (1–18).) No exemption in action for purchase price. Lien for seed is subject to no exemption laws. (Sec. 8373.) Workman's compensation payments are exempt. (Sec. 4287.) Equipment of members of national guard is exempt. (Sec. 2424.) Benefits of fraternal benefit association before or after payment are exempt. (Sec. 3465.) Cash bail is exempt. (Sec. 10588.) No exemption when debts incurred for work done or material furnished in construction or repair of the thing claimed to be exempt. (Art. I, Sec. 12, Constitution.)

Homestead.—Home owned and occupied by debtor not in a city is exempt to the extent of 80 acres, if in a city of 5,000 or more, it shall not exceed one-third of an acre, and if place less than 5,000 people, one-half acre. (Sec. 8337.)

Title may be equitable or legal. Husband and wife must join in order to waive the exemption. (Sec. 8339.) Proceeds from sale of homestead is exempt for one year. After absence from homestead for 6 months a presumption of abandonment arises, unless notice of claim is filed. (Sec. 8342.)

Waiver of Exemptions.—Such homestead exemption shall not extend to any mortgage lawfully obtained thereon, to any valid lien for taxes. . . . But if the owner be married, no mortgage of the homestead, except for the purchase money unpaid thereon, nor any sale or alienation thereof shall be valid without the signatures of both husband and wife. (Sec. 8340.)

A deed, a contract for a deed or a mortgage, other than for the purchase money, of a homestead, without the signature of the wife, is void. (21–201.)

No mortgage, pledge or other encumbrance of the following personal property, to wit: the family Bible, pictures, school books or library and musical instruments for the use of the family, all wearing apparel of the debtor and his family; all beds, bedsteads and bedding kept and used by the debtor and his family, all stoves and appendages put up or kept for the use of the debtor and his family; all cooking utensils, and all other household furniture not herein enumerated not exceeding $500 in value; one sewing machine, given or made by a married man or woman, shall be valid as to such exempt property unless it be by written instrument, jointly executed and acknowledged by husband and wife, if both are living. (Sec. 8349.)

MICHIGAN

Source.—Latest Compiled Laws, 1915; Session Laws to date.

Wages.—Householder having a family is exempted 60 per cent of wages, but in no case shall more than $30 nor less than $8 be exempt; if the debtor is not a householder having a family, he shall have exempt 30 per cent of his wages and never more than $15, with a minimum of $4. (Sec. 14365.)

Personal Property.—Instruments of domestic labor, stoves, church pew, a cemetery lot, all wearing apparel of every person or family, library and school books of every individual to the value of $150, and all family pictures are exempt. Each householder may claim specified animals, provisions for his family for 6 months, all household goods and utensils to the value of $500; the tools, implements, materials, stock, a vehicle to the value of $350, etc., to enable any person to carry on the profession or trade. Provisions enough to keep the exempted animals for 6 months. (Sec. 12858 as amended by Chap. 87, Laws of 1929.) No exemption in action for the purchase price of the article. (Sec. 12859.) Householder not having a homestead may have exempt $1,000 worth of stock in a building and loan association. (Sec. 12860.)

Homestead.—Resident may claim any quantity of land not exceeding 40 acres and the dwelling house thereon, but if it is in the city then one lot and the dwelling house to the value of $1,500. Homestead right survives to widow and children. (Sec. 12888.) No exemption from mortgage. Wife's consent necessary in order to mortgage homestead. (Sec. 12889.) Need not own land on which homestead is situated. (Sec. 12893.)

Waiver of Exemptions.—(Personal property) . . . and any chattel mortgage, bill of sale or other lien created on any part of the property above described . . . shall be void, unless such mortgage, bill of sale, or lien be signed by the wife (if he have any) of the party making such mortgage or lien. (Sec. 12858.)

Such exemption (homestead) shall not extend to any mortgage thereon lawfully obtained, but such mortgage or other alienation of such land by the owner thereof, if a married man, shall not be valid without the signature of the wife to the same. (Unless purchase money mortgage.) (Sec. 12889.)

MISSISSIPPI

Source.—Hemingway's Ann. Mississippi Code, 1927.

Wages.—Head of family is exempted $50 per month of this wages for personal work, except as to debts for board and lodging. (Sec. 1891 (10).)

Personal Property.—Tools of mechanic necessary for carrying on his trade, agricultural implements of a farmer necessary for two male laborers, the implements of a laborer, books of a student, wearing apparel of every person, the libraries of all persons, not exceeding $500 in value, also the instruments of doctors and dentists used in their profession to the value of $250, globes and maps used by teachers are exempt. (The head of family is exempted.) Specified animals, quantities of grain and provisions, two bridles and saddles, one sewing machine, household furniture not over the value of $200 and all family portraits are exempt. (Sec. 1891 (1–9).) Proceeds of life insurance policy to the value of $10,000 (Sec. 1892), except for funeral debts and those of last illness are exempt.

Judgment for personal injuries exempt to the sum of $10,000.

Every citizen householder shall be entitled to hold exempt personal property, except money, to be selected by him not to exceed $250. (Sec. 1902.) Property is not exempt in an action for the purchase price, taxes or labor done thereon, or judgment on bail bond or recognizance. (Sec. 1911.)

Homestead.—Householder having family, or widow or widower over 60 years, who have previously come under this section is exempted the lands and buildings owned and occupied as a residence, but the quantity of land shall not exceed 160 acres nor the value thereof $3,000. (Sec. 1901.) A declaration of homestead may be made and proved as a deed and recorded. (Sec. 1903.)

Ceasing to reside on homestead renders it liable. (Sec. 1912.) No encumbrance upon the homestead shall be valid unless the wife of the owner, if he be married, sign it. (Sec. 1914.)

Waiver of Exemptions.—The exempt property, real or personal, disposed of by the owner, shall not by disposal become liable to the debts of the owner; and any debtor leaving this state may take with him his personal property which is exempt from execution. (Ann.) The policy of the section is to free the exempt property from forfeiture to the creditors if the debtor sells it. The words "disposed of" are very broad and include any of the modes by which title may be transferred. (Sec. 1913, 54 Miss. 74.)

A conveyance, mortgage, deed of trust or other encumbrance upon the homestead exempted from execution shall not be valid or binding unless signed by the wife or husband (Sec. 1916), if married (except where the other spouse is insane). (Sec. 1914.)

MISSOURI

Source.—Revised Statutes of Missouri, 1919, and Supplement of 1927.

Wages.—No person shall be charged as garnishee for more than 10 per cent of any wages due from him to defendant in his employ for the last 30 days. (Sec. 1848.)

Personal Property.—Fireman's pensions (Secs. 9046, 9076) and fraternal benefit association benefits (Sec. 6419) are exempt. Insurance policy of husband in which widow is beneficiary is exempt if the premiums are not over $500. (Sec. 6149.) For other insurance provisions see Secs. 6182, 6146. The rents from the real estate of the wife, with certain exceptions (Sec. 7327); the wearing apparel of any person; and necessary tools and implements of trade are exempt. (Secs. 1610–1611.) To the head of family there is exempt specified animals and provisions and designated farm utensils; four beds and bedding and other household furniture not over the value of $100; provisions for family, not to exceed $100, the Bible and school books, and church pew. Professional men may select such books as necessary in the place of other property allowed, and doctors may select their medicines in lieu thereof. (Sec. 1611.) Fire apparatus is exempt. (Sec. 1613.)

Instead of stock and work animals, other property to the value of $300 may be selected. (Sec. 1614.) There shall be no exemption in action for taxes, laborer's or domestic's wages, or the purchase price. (Secs. 1617, 1618, 1622.)

Homestead.—Head of family may claim dwelling house and land used in connection therewith in the country not to exceed 160 acres, or exceed the total value of $1,500; in cities of 40,000 or more, the area of 18 square rods, or exceed the value of $3,000; in cities having a population from 10,000 and less than 40,000, not more than 30 square rods or value of $1,500; in towns the population of less than 10,000, not more than 5 acres or $1,500. Homestead may only be encumbered by husband and wife acting jointly. (Sec. 5853.) The homestead right will survive to the minor child or widow. (Sec. 5858.)

Waiver of Exemptions.— . . . The husband shall be debarred from and incapable of selling, mortgaging, or alienating the homestead in any manner whatever, and every such sale, mortgage or alienation is hereby declared null and void. Provided, however, that nothing herein contained shall be so construed as to prevent the husband and wife from jointly conveying, mortgaging, alienating, or in any manner disposing of such homestead or any part thereof. (Sec. 5853.)

Sec. 52A, 523.

No provision on personal waiver.

MONTANA

Source.—Revised Code of Montana, 1921; Session Laws to date.

Wages.—The earnings for services rendered within 45 days next preceding an attachment are exempt when such earnings are necessary for the support of the family, but where the debts were incurred for necessaries, then one-half of the earnings are exempt. (Sec. 9429.)

Personal Property.—Benefits from fraternal benefit societies (Sec. 6326), or accident insurance (Sec. 6250) are exempt. One not a head of a family has only the exemption of wearing apparel. One who is the head of a family can claim all wearing apparel, chairs, tables, desks and books to the value of $200, all necessary household furniture, provisions and fuel for the family sufficient for three months, specified animals, one clock and pictures. No exemption in action on purchase price or mortgage lien. (Sec. 9427.) The resident head of a family may claim one of the following 6 exemptions: (1) farmer implements of not over $600, 2 oxen, or horse and harness and wagon, seed, grain, etc., for planting purposes not over the value of $200; (2) mechanic tools or implements necessary to carry on the trade; (3) doctor or dentist instruments, and professional libraries and office furniture necessary to his profession; (4) to attorneys and ministers, professional libraries and office furniture, musical instruments of a teacher, and office furniture of notaries; (5) to a miner, his cabin, implements not over $1,000 and a horse or mule when necessary; to an engineer, instruments, tools, books, and records necessary to carry on his profession; chemist or assayer, the same; (6) to a teamster, one horse and harness for 2 animals and wagon, one truck, one vehicle for doctors. Food for 3 months for all animals is exempt; (7) life insurance benefits if the annual premiums paid do not exceed $500, apparatus of fire department. No exemption in an action for purchase price or mortgages. (Sec. 9428 (1–9).)

Homestead.—Homestead to the extent of 160 acres used for agricultural purposes, if in the country, and the dwelling house thereon; and if in city, land not over one-fourth of an acre and the house thereon, such homestead in either case not to exceed the sum of $2,500. (Sec. 6968.) A declaration of homestead must be executed and acknowledged in the same manner as a deed, and filed for record. (Secs. 6970, 6971, 6972.)

The homestead shall survive to the widow and minor children. (Sec. 6973.)

Waiver of Exemptions.—No provisions.

NEBRASKA

Source.—Compiled Statutes of Nebraska, 1922; Session Laws to date.

Wages.—Wages of heads of family are exempt to the extent of 90 per cent of the amount of such wages both before and after they shall be due. (Sec. 902.)

Personal Property.—Disabled veteran's pensions to the amount of $2,000 are exempt (Sec. 9042). Fire fighting apparatus is exempt. (Sec. 2438.) To all heads of family having no homestead, $500 worth of personalty except wages is exempt. (Secs. 9035, 9037.) Heads of family are exempted the following articles: Bible, pictures, school books, library, church pew, cemetery lot; all necessary wearing apparel; household furniture not to exceed $100; specified animals, if he is engaged in agriculture, certain animals and their feed and farming implements not over the value of $50; provisions and fuel for the debtor's family necessary for 6 months. The tools and instruments

of any mechanic, miner, or other person used and kept for the purpose of carrying on his trade or business; the library and implements of any professional man is exempt. (Sec. 9039.)

No exemption in the above goods for debts due clerks, laborers or mechanics or money owing from an attorney to any person; nor shall the above exemptions total more than $500 exemption in an action of debt for necessaries. (Sec. 9040.)

Homestead.—Head of family may claim a homestead to the value of $2,000 consisting of the land and dwelling house in which the debtor resides, not exceeding 160 acres of land in the country, or a quantity of contiguous land not exceeding 2 lots in the city. (Sec. 2816.) No exemption from mechanic's, laborer's, or vendor's liens, or mortgages executed by husband and wife. (Sec. 2818.) (See Ch. 111, 1927.) Homestead can be encumbered if husband and wife join in execution and acknowledgment. (Sec. 2819.) The proceeds of a homestead when sold is exempt to the amount of $2,000 for the period of 6 months. (Sec. 2831.) The right of homestead survives to the widow and minor children. (Sec. 2832.)

Waiver of Exemptions.—(See 34 Neb. 649.) Exempt property not subject to fraudulent alienation.

(No provision on personal property waiver.)

The homestead of a married person cannot be conveyed or encumbered unless the instrument by which it is conveyed or encumbered is executed and acknowledged by both husband and wife. (Sec. 2819.)

NEVADA

Source.—Revised Laws of Nevada, 1913; Session Laws to date.

Wages.—The earnings of a debtor for services rendered within 30 days next preceding the levy of execution are exempt when they are necessary for the support of his family, but when the debts are for necessaries, one-half of the above earnings are not exempt. (Sec. 5288–8.)

Personal Property.—The following property is exempt: Chairs, desks, etc., to the value of $200, necessary furniture, wearing apparel, beds, provisions and fuel sufficient for the family for 3 months, a piano and specified animals. Farm implements to the value of $1,000, specified animals and all seed to the value of $200 are exempt. The tools of a mechanic. The seal and records of a notary, the instruments of doctors, dentists and surveyors and their libraries and furniture, the libraries of attorneys, judges, ministers, editors, teachers, and their office furniture; the musical instruments of a teacher are exempt. The cabin of a miner to the value of $500 and implements to the value of $500 and his mining claim not exceeding the value of $1,000 is exempt. The teamster's team and wagon are exempt. Poultry to the value of $75 is exempt.

Building material to the value of $1,000 is exempt under certain conditions. Implements to the value of $1,000 for the purpose of constructing artesian wells are exempt. All benefits from life insurance, the annual premiums of which do not exceed $500. No exemption in an action on the purchase price or to foreclose the mortgage. (Sec. 5288.)

Homestead.—The homestead consists of the land and the dwelling house thereon, not to exceed in value $5,000. Not exempt in action for purchase price, improvements, taxes or laborer or mechanic liens. Selection shall be made by husband or wife, or both, declaring their intention in writing to claim the same, describing the premises. It shall be executed and recorded as conveyances affecting real estate. (Sec. 2142–1.)

No encumbrance shall be valid unless the separate acknowledgment of the wife be obtained. (Sec. 2142–1.) Homestead is to descend to surviving spouse. (Sec. 2145.)

Waiver of Exemptions.—No provisions.

NEW HAMPSHIRE

Source.—Public Laws of New Hampshire, 1926; Session Laws 1927.

Wages.—Wages for services performed after the service of the writ are exempt (Vol. 2, p. 1408, Sec. 20); wages for services performed before the service of the writ to the amount of $20 are exempt. Except when an action shall be brought for necessaries, only an amount up to $10 shall be exempt. Wages of wife or minor child are exempt. (1927, Ch. 30.)

Personal Property.—Benefits from fraternal benefit societies (Vol. 2, p. 1150, Sec. 117), pensions from the United States before being paid (Vol. 2, p. 1408, Sec. 20), and fees of jurors or witnesses (Ib.) are exempt. Householder may claim exempt wearing apparel for self and family, beds, household furniture to the value of $100, cook stove, sewing machine, provisions and fuel to the value of $50, specified animals, church pew, burial lot. (Vol. 2, p. 1334, Sec. 2.) Fireman's pension is exempt. (Vol. 2, p. 1100, Sec. 65.) Insurance from exempted property destroyed is exempt. (Vol. 2, p. 1408, Sec. 20.)

Homestead.—Every person is entitled to $500 worth of his homestead right or his interest therein. The right survives to surviving spouse. No exemption in an action for taxes, mechanic liens, debts for repair, or on mortgages. In order to encumber the homestead the same formality is required as in the conveyance of land (husband or wife of the owner must join). (Vol. 1, p. 828, Secs. 1–4.) Owner may have the homestead declared and recorded in the registry of deeds. (Vol. 1, p. 830, Sec. 16.)

Waiver of Exemptions.—No provision as to personal property.

No deed shall convey or encumber the homestead right except a mortgage made at the time of purchase to secure payment or the purchase money, unless it is executed by the owner and wife or husband, if any, with the formalities required for the conveyance of land. (Vol. 1, p. 828, Sec. 4.)

No other provision on waiver.

NEW JERSEY

Source.—Compiled Statutes of New Jersey, 1924; Session Laws to date.

Wages.—Where wages of the amount of $18 or more per week are due the debtor, the creditor may get execution against such wages, debts, earnings, salary, income, etc., and it shall be a continuing lien upon wages due or to become due to the amount specified therein which shall not exceed 10 per centum unless the income of said debtor shall exceed the sum of $1,000 per annum, in which case the judge may order a larger percentage and said levy shall become a continuing levy until said execution is satisfied. There shall be only one execution against the wages at the same time. (Cumulative Supp., Vol. 1, Secs. 71–91.)

Personal Property.—Resident householder may claim goods and chattels, shares of stock or interest in any corporation and property of every kind not exceeding in value of $200, in addition all wearing apparel. (Vol. 2, p. 2245, Sec. 10.)

Pension of firemen and policemen are exempt from execution. (Vol. 2, p. 2450, Sec. 476.)

Homestead.—Householder having a family may claim exempt to the value of $1,000 the lot and building thereon, occupied as a residence, and the right shall continue after his death for the benefit of his family. (Vol. 4, p. 4693, Sec. 57.) The conveyance shall show it is a homestead, and a notice made and acknowledged and recorded and published. No property shall be exempt from taxes or for labor done or material furnished therefor, or for the purchase price. (Vol. 4, p. 4694, Sec. 58–2.) An encumbrance is void unless made with full consent of wife or husband of the owner by deed duly acknowledged and unless the consideration were fair. (Ib, Sec. 63.)

Waiver of Exemptions.—No provision on waiver of personal property. That in case any lot buildings have been declared, according to the provisions of this act, a homestead, it shall be reserved as such for the use of the family, and shall not be sold, alienated, or encumbered by the owner thereof, nor leased for a longer term than one year; and any such sale, alienation encumbrances or leasing shall be void unless the same be made with the full consent of the wife or husband of the owner (if he or she have any), by deed duly acknowledged, and unless the consideration paid for the same be its full value, and the same or $1,000 thereof, shall be actually invested in the purchase of other lands and buildings, declared to be a homestead in the manner herein provided; and the title of such purchaser shall not be good until such purchase money is so invested . . . nor shall any homestead be rented out or leased for any time without the consent of the wife of the owner. (Sec. 63.)

NEW MEXICO

Source.—New Mexico Statutes Ann. 1915; Session Laws to date.

Wages.—Eighty per cent of wages due the debtor for the last 30 days' services when the wages do not exceed $75 a month are exempt; if the wages exceed $75, the excess shall be subject to levy. There is no exemption where the debt claimed was for necessities and the defendant is not head of a family residing in this state. (Laws 1917, Ch. 18.)

Personal Property.—Head of family or widow may claim exempt: Wearing apparel, beds, stove, fuel for 60 days, furniture to the value of $200; specified animals, books, pictures, provisions to the value of $50, certain household utensils. (Sec. 2311.) Doctors may claim books and instruments to the value of $100, and a vehicle. (Sec. 2312.) Single women may claim clothes to the value of $150, books to the value of $50 and certain other things. (Sec. 2313.) Lawyers may exempt books to the value of $500. (Sec. 2314.) Life insurance to the value of $5,000 is exempt. (Sec. 2315.) No property is exempted from taxes assessed against it. (Sec. 2319.)

Homestead.—Husband and wife, widow or widower living with unmarried daughter or unmarried minor son may claim exempt a homestead to the value of $1,000. No exemption in action on purchase price nor the lien of any person or a mortgage thereon. (Sec. 2321.) Homestead may be in a superstructure. (Sec. 2322.) The right survives to the widow and children. (Sec. 2323.) Anyone not the owner of a homestead may claim in lieu thereof real or personal property to the value of $500. (Sec. 2327.)

Waiver of Exemptions.—No sale of real estate made under a mortgage which is not executed by the wife of the debtor, if he has a wife, shall in any manner affect the right of the debtor's family or wife to have a homestead set off under the provisions of this chapter. (Sec. 2328.)

No provision on personal property.

NEW YORK

Source.—Cahill's Consolidated Laws of N. Y., 1923; Ann. Supp., 1927.

Wages.—Where judgment debtor has due him income of $12 a week or more, the creditor may seek to satisfy his judgment therefrom to the extent of 10 per cent of the excess. Only one execution shall be satisfied at one time. (Sec. 84, Civil Practice of N. Y. Ann. Book 4.) No money paid or to be paid by an employees mutual benefit association shall be subject to garnishment. (30.229 Cahill's Supp. 1927.)

Personal Property.—Workman's compensation payments (66.33) and police pensions (65.199e) are exempt. (Cahill's Consolidated Laws, 1923.) The following property of a householder is exempt: Necessary stoves, Bible, pictures and school books to the value of $50; church pew, specified stock and necessary food and fuel for the family use for 60 days; all wearing apparel; all necessary beds and cooking utensils; tools and implements of a mechanic necessary for his trade to the value of $100; also furniture, tools, professional instruments and library to the value of $250. No exemption in an action for wages by a domestic or for purchase price. (Secs. 665, 666, 668 Gilbert-Bliss, Civil Practice of N. Y. Ann. Book 4.)

Soldier's and sailor's pay or pensions from the United States are exempt. (Ib., Sec. 667.) Burial lot is exempt. (Ib., Sec. 670.)

Homestead.—Householder may claim as homestead a lot, buildings thereon owned and occupied by him and designated and recorded as required by law, to the value of $1,000, except in an action for the purchase price, taxes or debts contracted before its purchase. The right of homestead survives the widow. (Ib., Secs. 671, 675.)

Waiver of Exemptions.—Action for conversion of plaintiff's personal property, the notes on which the judgment was recovered were expressed to be given for value received and each of them contained the following words: "and I hereby waive and relinquish all right of exemption of any property I may have from execution of this debt."

J. Denio—"I am of the opinion that a person contracting a debt cannot agree with the creditor that in case of nonpayment he shall be entitled to levy his execution upon property exempt from levy by the general laws of the state. The statutes . . . are based upon views of policy and humanity which would be frustrated if the agreement were sustained. The law was designed to protect him against his own improvidence." (Knettle v. Newcomb, 22 N. Y. 249.)

NORTH CAROLINA

Source.—Constitution, N. C. Cumulative Supp. 1925; Session Laws to date.

Wages.—No provision.

Personal Property.—Personal property of any resident to the value of $500, to be selected by the debtor, is exempted. (Constitution, Art. X, Sec. 1.) Life insurance, where wife of family is beneficiary, is exempt. (Ib., Sec. 7.)

Homestead.—Homestead and buildings used therewith to the value of $1,000, or any lot in a town with buildings thereon not exceeding value of $1,000 shall be exempt. (Ib., Sec. 2.) The right of homestead shall survive to wife and minor children. (Ib., Sec. 3.) There shall be no exemption in an action on laborer's or mechanic's lien. (Ib., Sec. 4.) Wife must join in encumbrance of homestead. (Ib., Sec. 8.)

Waiver of Exemptions.—Nothing contained in the foregoing sections of this article shall operate to prevent the owner of a homestead from disposing of the same by deed, but no deed made by the owner of a homestead shall be valid without the voluntary signature and assent of his wife, signified on her private examination according to law. (Constitution, Art. X, Sec. 8.)

On question of waiver, see 163–409; 114–102; 122–631; 124–437; 126–77; 120–6; 110–374; 109–165; 154; 102–236; 97–344; 82–474; 72–292; 77–385; 74–544; 348; 69–289.

But nothing in this action shall validate any provision or stipulation otherwise illegal *nor authorize the enforcement of an authorization to confess judgment or a waiver of homestead and personal property exemptions.* (Sec. 2986.)

(See 74–544; 128–193.)

NORTH DAKOTA

Source.—Compiled Laws of North Dakota Ann. 1913, Supplement 1925, Session Laws 1927.

Wages.—Resident heads of family may claim $20 a week of his wages exempt. (Sec. 7567 as amended by Ch. 188, Laws of 1929.)

Personal Property.—Workmen's compensation payments are exempt. (Sec. 396a, 22.) There is an absolute exemption of church pew, burial lot, family pictures, Bible, and library to the value of $100; all wearing apparel of debtor and family; and provisions and fuel for the family use sufficient for one year, the homestead as defined by law and insurance benefits covering exempt property not exceeding the amount allowed. (Sec. 7730 as amended by Ch. 127, Laws of 1929.) Head of family may claim in addition $500 worth of personal property, including money, or he may take as an alternative exemption (1) all books and musical instruments of the family to the value of $500; (2) furniture to that value; (3) specified animals and farm implements to the value of $300; (4) the tools or implements of any mechanic, and in addition thereto $200 in stock. The library and implements of any professional man to the value of $600 is exempt. (Sec. 7731.) Only absolute exemptions and in addition certain furniture and animals to the value of $500 shall be exempt from doctor bills, laborers's and mechanic's wages. (Sec. 7739.) No property shall be exempt in an action for the purchase price. (Sec. 7740.) Exemptions must be claimed within 3 days after notice of execution. (Sec. 7738.) Nonresident, absconding debtor, and corporation for profit are only entitled to an absolute exemption. (Sec. 7742.)

Homestead.—Resident head of family may claim a homestead not to exceed 2 acres of land and the buildings thereon, if in a town plat, to the value of $8,000 over and above liens, and if not in town plat, 160 acres and dwelling house and all improvements regardless of value. (Sec. 5605.) Different tracts of land may be included in a homestead only if they are contiguous. (Sec. 5606.) It may not be encumbered unless husband and wife execute and acknowledge the instrument. (Sec. 5608.)

Waiver of Exemptions.—Anyone may waive the advantage of a law intended solely for his benefit. But a law established for a public reason cannot be contravened by a private agreement. (Sec. 7247.)

No provision on personal property waiver.

The homestead of a married person cannot be conveyed or encumbered, unless the instrument by which it is conveyed or encumbered is executed and acknowledged by husband and wife. (Sec. 5608.)

OHIO

Source.—Throckmorton's Ohio General Code, 1926; Supp. 1928.

Wages.—Ninety per cent of the personal earnings of a debtor and of his minor children for 30 days preceding the levy not exceeding $75, when it is shown that such earnings are necessary for the support of the debtor or family, are exempt. If the claim is for work and labor or for necessaries furnished to the debtor or family, only 80 per cent shall be exempt. (Sec. 11725 (6).)

Personal Property.—Unmarried person may claim wearing apparel to the value of $100 and tools of his occupation or profession to the value of $100. Head of family may claim wearing apparel of family, stove, fuel for 60 days, live stock, and furniture to the value of $150; all books and pictures, provisions for family use to the value of $50, tools of his trade to the value of $200. (Sec. 11725 (1–5).) No exemption in action on a mortgage nor on a claim for wages of $100 or less, for the purchase price or for materials or labor furnished in the construction of the home or for taxes. (Sec. 11729.) Workmen's compensation payments are exempt. (Sec. 1465 (88).) Life insurance in which the family is beneficiary is exempt. (Sec. 9394.)

Homestead.—Husband and wife living together, a widow or widower living with an unmarried daughter or minor son may hold exempt a homestead to the value of $1,000. (Sec. 11730.) Homestead may be in a superstructure. (Sec. 11731.)

Waiver of Exemptions.—A debtor may not, by means of a provision in a note, waive the benefit of the homestead or of other exemptions made by law for his protection. (20 N. P. (N. S.) 577; 21 N. P. (N. S.) 7.)

Assignment of wages must be written, and if the assignor is married the other spouse must give written assent to the assignment, and the written assent of the guardian of a minor must also be obtained. No assignment by a married person of over 25 per cent shall be valid, or of over 50 per cent of an unmarried person. The balance shall not be subject to any further assignment. The time of filing assignment with employer determines priority among assignees. (Laws of 1929, page 479.)

OKLAHOMA

Source.—Compiled Statutes Ann. 1921, Supplement 1926; Session Laws 1927.

Wages.—The earnings of a debtor for his personal services, earned within 3 months of the order, cannot be taken when it is shown by affidavit that they are necessary for his family. (Sec. 1045.)

Personal Property.—Persons who are not heads of families may claim a cemetery lot, wearing apparel, tools of a trade and a horse. (Sec. 6599.) War veterans' pensions are exempt. (Sec. 6602.) A minister's library is exempt. A head of a family may claim all furniture, a cemetery lot, implements of husbandry, tools of his trade, family library and wearing apparel, specified stock and provisions. (Sec. 6599.)

Homestead.—Householder may claim homestead in country of 160 acres, in one or more tracts; in a town not more than one acre to the value of $5,000 and in no event shall it be reduced to less than one-fourth acre without regard to value. If the homestead is used both for home and business, its value shall not exceed $5,000. No exemption in an action for purchase price, taxes, work and materials. (Constitution, Art. XII, Secs. 1, 2.)

Waiver of Exemptions.—Sale of personal property "exempt from execution of liens" does not render such property subject to attachment.

Wife has to join with husband in mortgage of homestead, to secure payment of note of husband, where consideration came to him alone. . . . (44 Ok. 354.)

OREGON

Source.—Olson's Oregon Laws 1920; Session Laws to date.

Wages.—The earnings of any persons for services performed within 30 days next preceding the attachment, amounting to the sum of $75 or less, shall be exempt when they are necessary for the support of his family, but when the debt was incurred for family expenses, 50 per cent of such earnings shall be exempt, but no earnings shall be exempt on a demand incurred for property or money obtained under false pretenses. (Sec. 228.)

Personal Property.—The following articles are exempt: Books, pictures, and musical instruments owned by any person to the value of $75, necessary wearing apparel of any person to the value of $100, and if he be a householder, apparel to the value of $50 of each member of his family. The tools, instruments, etc., with which any person carries on his trade are exempt to the value of $400. A householder may claim specified animals, furniture, and utensils to the value of $300, and necessary food for his family for 6 months. There is also exempt a church pew; government pensions are exempt. No exemption from a purchase price debt. (Sec. 227 (1–10).)

Homestead.—A homestead to the value of $3,000 is exempt, not to exceed 160 acres in the country and not over one block in the city. The proceeds of the sale of the homestead are exempt for one year. (Sec. 221.) No exemption from debts for labor or material or for purchase price, liens or mortgages. The right of homestead survives to the widow. (Sec. 225.)

Waiver of Exemptions.—The homestead exemption may be waived or relinquished by abandonment or conveyance, so that the property will be subject to levy and sale under execution upon a judgment had against the owners. (Davis v. Lowe, 66 Or. 601.)

PENNSYLVANIA

Source.—Pennsylvania Statutes Law 1921; Session Laws to date.

Wages.—No provision.

Personal Property.—Property to the value of $300 (exclusive of all wearing apparel of debtor and family and all Bibles and school books.) (Sec. 10379.) Insurance returns of not over $100 a month shall be exempt. (Sec. 10387.) Leased property is exempt if notice is given to the landlord. (Sec. 10389.) There shall be no exemption from judgments for labor for $100 or less, or for judgment for board for less than four weeks. (Sec. 10392.) Receipts of a school employee fund are exempt. (Sec. 5377.) Money paid under World War Veteran's Act is exempt. (Sec. 19966a–12.)

Homestead.—No provision.

Waiver of Exemptions.—*The right of exemption may be waived in any judgment or promissory note.* (Act of April 9, 1870.)

RHODE ISLAND

Source.—General Laws of Rhode Island 1923; Session Laws to date.

Wages.—Wages due or payable to any debtor not exceeding $10, except when the cause of action is for necessaries, is exempt. The salary and wages

of a wife and minor child and those of a seaman are exempt. (Sec. 5234 (9, 12, 13).)

Personal Property.—Necessary wearing apparel of debtor and family, if he have one, is exempt. The necessary tools of the debtor to the sum of $200 and the library of a professional man shall be exempt; household furniture to the value of $300, including beds, family books to the value of $300, church pew, and cemetery lot are exempt. (Sec. 5234.) Police pensions (Sec. 5235) and workmen's compensation payments are exempt. (Sec. 1234.)

Homestead.—No provision.

Waiver of Exemptions.—No provision.

SOUTH CAROLINA

Source.—Code of Laws 1922; Session Laws to date.

Wages.—No provision.

Personal Property.—Personal property of resident head of family to the extent of $500 is exempt. Personal property consisting of necessary wearing apparel, tools of trade not over the value of $300, are exempt to any person not the head of a family. (Sec. 5495.) No exemption in an action for taxes, for purchase price, or for the erection of improvements. (Sec. 5497.)

Homestead.—Resident head of family may claim homestead to the value of $1,000. (Sec. 5490.) After a homestead has been recorded it shall not be waived except by husband and wife joining therein. (Sec. 5494.) Yearly products shall be liable for debts incurred in the production thereof. (Sec. 5497.)

Waiver of Exemptions.—No waiver of the right of homestead shall defeat the right before assignment except it be by deed of conveyance or by mortgage, and only as against the mortgage debt; and no judgment creditors or other creditors whose lien does not bind the homestead shall have any right or equity to require that a lien which embraces the homestead and other property shall first exhaust a homestead; provided, that after a homestead in lands has been set off and recorded the same shall not be waived by deed of conveyance, mortgage or otherwise unless the same be executed by both husband and wife if both be living. (Sec. 5494.)

No other provision.

SOUTH DAKOTA

Source.—Revised Code 1919; Session Laws to date.

Wages.—No provision.

Personal Property.—Absolute exemption; family pictures, church pew, cemetery lot, Bible, and family library to the value of $200, all wearing apparel of the debtor and his family, provisions and fuel for debtor and his family for one year. (Sec. 2658 (1–6).) In addition, the head of a family may claim personal property or money to the value of $750; any other person may claim property to the value of $300. (Sec. 2659.) Head of a family may choose, in alternative to the above, an additional exemption of the following property: Books and musical instruments to the value of $200, furniture to the value of $200, specified animals and implements to the value of $1,250, the tools and implements of any mechanic to the value of $200, the library and instruments of professional person to the value of $300. (Sec. 2660.) The proceeds of life insurance to the value of $5,000 are exempt. (Sec. 2661.) No exemption in an action for purchase price (Sec. 2669), for laborer's or mechanic's wages

or physician's bills or for the necessaries of life. (Sec. 2668.) See Secs. 2670, 2671, 2672, for other nonexemptions.

Homestead.—There is exempt a homestead to the value of $5,000. (Sec. 2658 (7).) If within a town, to the extent of one acre; if not in a town, 160 acres. (Sec. 459.)

The right of homestead survives to the widow. (Sec. 467.)

As to recording of homestead, see Secs. 461, 462.

Waiver of Exemptions.—The giving of a chattel mortgage on exempt property to secure an honest debt due to the mortgagee cannot be held fraudulent as to creditors. (IS.D. 172.)

TENNESSEE

Source.—Annotated Code of Tennessee 1917; Session Laws to date.

Wages.—Ninety per cent of income less than $40 a month of person 18 years or over, who is a resident and head of a family is exempt; income in excess of $40 a month is exempt to the extent of $36. (Sec. 3795a, 3–4.)

Personal Property.—Head of a family may exempt beds, tableware, specified household utensils, Bible and school books, a cart to the value of $75, enumerated provisions (Sec. 3794), and certain farm implements. (Sec. 3795.) The tools of a mechanic are exempt. (Sec. 3795a, 1.)

Homestead.—Head of family may claim a homestead to the value of $1,000. (Sec. 3798.) No exemption in an action for taxes or for the purchase price. (Sec. 3799.)

Waiver of Exemptions.—Any agreement of the debtor to waive any of his rights to homestead must, in such case, be established by plain, positive, and direct proof, for there is strong presumption against any waiver or abandonment of the homestead right. (Ann. of Sec. 3798–33; 9 Pickle 671.)

The constitution simply prohibits the alienation of the homestead, "without the joint consent of the husband and wife, when that relation exists," but the statute in this section provides that such consent shall "be evidenced by conveyance duly executed as required by law for married women," which means that the wife shall join in the husband's deed, with her privy examination properly taken and duly certified as required. (Ann. of Sec. 3798–19.)

A waiver of the benefit of the exemption laws, stipulated in a promissory note, whether made by the head of a family or by a single person entitled to particular exemptions, confers upon the creditor no right, upon obtaining judgment for his debt, to have execution levied upon such exempt property over the debtor's objections then made. Such an agreement contravenes a sound public policy, and if enforced would abrogate the exemption statutes. (10 Pickle 651, 657.)

While the debtor entitled to the benefit of the exemptions cannot waive such right to secure his debts, still he can mortgage or pledge the property for such purpose, and a mortgage or lien on specified exempt personal property may be created in a promissory note to secure the payment of the debt. (P. 3573–11; 3 Lea 72; 10 Lea 113.)

The owner of personal property exempt from execution has the absolute right to sell, barter, exchange, mortgage, or otherwise dispose of the same at his discretion, though it cannot be legally levied on and sold under execution by his consent, for the debtor, whether he be the head of a family or not, cannot waive the right to the exemption by permitting a sale thereon under execution. (P. 3572–9; 2 Cold 283; 10 Heis 522.)

TEXAS

Source.—Vernon's Annotated Texas Statutes (Civil Statutes).

Wages.—All current wages for personal services are exempt. (Art. 3832, 3835.)

Personal Property.—The following things are exempt to a family: All furniture, cemetery lot, all implements of husbandry, all tools or books necessary for any trade, the family library and pictures, specified animals, and all provisions on hand. (Art. 3832.) There is exempt to everyone a burial lot, wearing apparel, tools and books of a trade, and a horse. (Sec. 3835.) Ferryman is exempt a boat to the value of $500. (Sec. 3836.) There is no exemption in an action for the purchase price, rent, taxes, or for work on the exempted thing. (Art. 3839.) The cash surrender value of any life insurance which has been in force more than two years shall be exempt from liability for any debt, provided a member or members of the family of the insured are beneficiaries. (Chap. 43, Laws of 1929, Second Calles Session.)

Homestead.—The homestead of a family in the country shall not exceed 200 acres, in the city it shall consist of such lots not to exceed the value of $5,000. (Art. 3833.) As to recording, see Arts. 3843–3849.

Waiver of Exemptions.—A maker of a note secured by a vendor's lien may in a suit to foreclose a lien waive his homestead rights. (54 C. A. 36.)

Defenses of limitation and homestead when waived by the maker of a note, are available only to purchase of land securing same, who assumes payment thereof. (238 S. W. 236.)

UTAH

Source.—Compiled Laws of Utah, 1917; Session Laws to date.

Wages.—One-half of the earnings of the judgment debtor of his personal services rendered at any time within 30 days next preceding the levy of execution when it appears that he is the head of a family and his earnings are necessary for their support; provided that when the earnings are $2 or less a day, he shall be entitled to an exemption of $30 a month. (Sec. 6925 (7).) Earnings of a minor child are exempt. (Sec. 6923.)

Personal Property.—The following property is exempt: Chairs, tables, and desks to the value of $200, also musical instruments, furniture to the value of $300. Pictures, provisions for 3 months, wearing apparel, and specified animals. Farm instruments to the value of $300, specified animals and seed to the value of $200, and crops to the value of $200, are exempt. The tools of a mechanic to the value of $500, the instruments and libraries of professional men are exempt, as is printer's material to the value of $500. The cabin of a miner to the value of $500 and equipment of $500 are exempt. The team and wagon of a teamster are exempt.

Life insurance having premiums of not over $500 is exempt. Workman's compensation payments are exempt before payment. (Sec. 3146.) All benefits from fraternal societies shall be exempt. (Sec. 3291.)

Homestead.—Lands (need not be contiguous) and improvements to the value of $2,000 are exempt to the head of a family, and the further sum of $750 for his wife and $300 for each other member of his family. (Session Laws 1923, Ch. 71.) Encumbrance of the homestead is not valid unless husband and wife join. (Sec. 2906.) Proceeds of sale are exempt. (Sec. 2915.) No exemption in an action for taxes, mechanic's or laborer's lien, or on a mortgage.

Waiver of Exemption.—The homestead exemption given by the constitution and by-laws is an absolute right intended to protect the home against creditors; and no waiver could affect the right of the wife and children. (17 U. 381; 21 U. 164.)

The homestead right, when vested in the head of a family, cannot be waived by contract in advance of the occasion of asserting such right; such a contract of waiver being against public policy. (21 U. 164.) If the owner is married, no conveyance or encumbrance of, or contract to convey, encumber, the premises selected and recorded as a homestead prior to the time of such conveyance, encumbrance or contract is valid unless both the husband and wife join in the execution of the same. (Sec. 2906.)

VERMONT

Source.—General Laws of Vermont, 1917; Session Laws to date.

Wages.—There is a $10 exemption of wages in trustee process; earnings of a minor child or married woman are not subject to the debt of a husband or parent. (Sec. 1944.)

Personal Property.—Life insurance to the amount of $500 is exempt. (Ses. Laws 1919, No. 74.) Burial grounds (Sec. 4842), shares in coöperative savings associations to the value of $500 are exempt. (Sec. 5486.) The following articles shall be exempt: Suitable apparel, beds, furniture, specified animals, provisions and fuel, church pews, instruments and books of doctors and dentists to the value of $200, books of clergymen and attorneys to the value of $200, one tool chest of a mechanic, and a team to the value of $300. No exemption in an action for a purchase price or for labor thereon. (Sec. 2439.)

Homestead.—A dwelling house and land used in connection therewith, not exceeding in value $1,000, with rents, issues, profits and products thereof, shall be exempt. (Laws 1921, p. 67.) Wife must join in the encumbrance of the homestead. (Ibid.)

Waiver of Exemption.—Wife must join in conveyance of homestead. (Laws 1921, p. 67.)

No other provision.

VIRGINIA

Source.—Virginia Code of 1924; Supp. 1926; Ses. Laws of 1927.

Wages.—Fifty dollars a month of the wages of a laboring man who is a householder shall be exempt. (Sec. 6555.) Minors' wages shall not be liable for the debts of their parents. (Sec. 6558.) Salaries of governmental officers are not exempt. (Sec. 6559.)

Personal Property.—Exemptions of real or personal property or both to the extent of $2,000 except in an action for the purchase price thereof, or for laborer's services, taxes or rent. (Sec. 6531.) Exemption may be waived in a bond bill or other instrument. (Sec. 6548.) In addition there is an absolute exemption of a family library to the value of $100, church pew, burial lot, necessary wearing apparel, beds, specified animals, utensils and provisions. A mechanic is exempted tools to the value of $100, and a fisherman, a boat and tackle to the value of $200. (Sec. 6552.) A farmer is exempted certain implements. (Sec. 6553.)

Homestead.—See Personal Property. Exemption of real estate should be declared in writing and recorded as a deed. (Sec. 6532.)

Waiver of Exemptions.—Whenever a judgment or decree is rendered on an instrument waiving the homestead or upon a demand against which the homestead cannot be claimed the court shall include in its judgment or decree words to the following effect, as the case may be: "Upon an instrument waiving the homestead," or "upon a claim against which the homestead cannot be demanded." This statement shall be endorsed upon the executions issued upon said judgments or decrees. In any action or suit when it is not apparent from the face of the pleadings that the demand is not subject to the homestead exemption, the plaintiff shall not have the benefit of the foregoing section unless in his declaration he allege that his demand is not subject to such homestead exemption. But no presumption of nonwaiver or that the judgment or decree was rendered upon a demand against which homestead be claimed is to be drawn from the silence of any judgment, execution, or decree on the matters provided for by this section. (Sec. 6551.)

WASHINGTON

Source.—Remington's Compiled Statutes, 1922; Supplement, 1927.

Wages.—A debtor who is supporting a family shall have exempt $20 of each week's wages, whether such wages be paid weekly or not. (1927 Laws, p. 703, Sec. 1.)

Personal Property.—The following property is exempt: Wearing apparel, private libraries to the value of $500, beds and furniture to the value of $500, specified animals and other property to the value of $250, a farmer may claim implements to the value of $500 and specified grain for seed. Mechanic may claim tools and stock in trade to the value of $500. Doctor may claim a library to the value of $500 and medicine to the value of $250. A teamster may claim a team and cart; a logger 3 yoke animals and equipment to the value of $300. Provision for all animals for 6 months is exempt. No exemption in an action for purchase price. (Sec. 563.) Proceeds of insurance are exempt. (Sec. 569.) Workmen's compensation payments are exempt. (Sec. 7684.)

Homestead.—Lands and buildings actually used as a home are exempt to the value of $2,000. (Sec. 552.) There must be a declaration and recording of the hometead. (Sec. 558.) Homestead cannot be encumbered except by an instrument executed by husband and wife. (Sec. 534.)

Waiver of Exemptions.—This chapter shall not be so construed as to prevent any single man or married man, his wife joining him, from waiving, by agreement in writing, the benefits of this chapter; provided that any agreement of waiver made by a husband and wife shall be witnessed and acknowledged as required in case of a deed conveying real estate. . . . (Sec. 571.) This section providing that a mortgagor may waive the benefit of all of his exemptions is repugnant to and annulled by Constitution, Art. XIX, providing that the legislature shall protect from sale a portion of the homestead and other property of all heads of families and making any such waiver in a mortgage void. (43 Wash. 179.) The legislature shall protect by law from forced sale a certain portion of the homestead and other property of all heads of families. (Art. XIX.)

This section has no application when the homestead has been voluntarily encumbered. (14 Wash. 515.)

As it appears in laws 1927 nothing in this chapter shall be so construed as to prevent the mortgaging of personal property which might be claimed as exempt, or the enforcement of such mortgage, nor to prevent the waiver of

the right of exemption by failure to claim the same prior to sale under execution. (Sec. 571.)

WEST VIRGINIA

Source.—West Virginia Code 1923; Barnes' Supp. 1925; Session Laws of 1927.

Wages.—No provision.

Personal Property.—Any husband or parent residing in this state, or widow or the infant child of deceased parent, may hold exempt personal property to the value of $200. Any resident mechanic, artisan, or laborer may claim working tools to the value of $50, providing no exemption to any person shall exceed $200. (P. 689, Sec. 23.) No exemption in an action for the purchase price. (P. 691, Sec. 28.) Workmen's compensation figures are exempt. (P. 312, Sec. 42.) Benefits from fraternal societies are exempt. (P. 1262, Sec. 22b.)

Homestead.—Exemption of homestead to the value of $1,000. (P. 692, Sec. 30.) The claim of homestead is executed and acknowledged and recorded the same as a deed. The homestead is not exempt from purchase price lien or debt for improvements. It is immaterial that the homestead has increased since the date of recording. (P. 693, Sec. 31.)

Waiver of Exemptions.—Where neither the constitution nor the statute inhibits it, the owner of a homestead may sell or encumber it, as by deed of trust, and such sale or encumbrance will be as valid as if the property had not been set apart as a homestead. (30 W. Va. 358.)

The sale of a homestead under deed of trust or decree of foreclosure of a mortgage thereon is not a "forced sale," within the meaning of the constitution, which exempts a homestead from a "forced sale."

WISCONSIN

Source.—Wisconsin Statutes, 1925; Session Laws to date.

Wages.—Sixty per cent of the earnings of a head of a family, including the earnings of a minor child, shall be exempt, but not exceeding $60 a month or $180 for the three months preceding the attachment, and an additional $10 for each of the preceding three months for each dependent child under 16 years of age. (Laws 1927, Ch. 380.)

Personal Property.—The following property is exempt: Bible, pictures, library, church pew, burial lot, wearing apparel of debtor and family, beds, furniture to the value of $200, specified animals, automobile for the purpose of trade to the value of $400, farming implements, provisions and fuel for family use for one year, tools of a merchant, mechanic, miner or trader to the value of $200, and printer's press and material to the value of $1,500, providing that in an action by a laborer for wages there shall be no exemption greater than $400. The interest of an inventor in his patent is exempt. Insurance and benefits of the head of a family are exempt to the sum of $5,000. Liberty bonds to the value of $200 and firemen's pensions are exempt. (272.18.)

Homestead.—To the extent of 40 acres in the country and one-fourth acre in the city, and to the value of $5,000, is exempt and the proceeds thereof are exempt for 2 years, except in an action on mechanic's, laborer's or vendor's lien, for taxes or on a mortgage. (272.20.)

Waiver of Exemptions.—Our homestead law is to be construed liberally to effect its design, which is to preserve to judgment debtors and their families

their homes, and yet leave them at liberty to change by sale, or to remove for temporary convenience, without forfeiture of the exemption. (51 Wis. 282.)

An agreement made by a debtor at the time of entering into a contract or executing a note, to waive all right of exemption of property from levy and sale on execution in respect to his indebtedness on such contract or note, is null and void, being against the policy of the law. (7 Wis. 582; 35 Wis. 668.)

WYOMING

Source.—Compiled Statutes of 1920; Session Laws to date.

Wages.—One-half of the judgment debtor's earnings for services rendered within 60 days previous to the day of execution shall be exempt if required for the support of his family. (Sec. 6080.)

Personal Property.—Head of family residing with them may claim a Bible, cemetery lot, beds and furniture to the value of $500. (Sec. 6035.) The necessary wearing apparel of every person to the value of $150 is exempt. (Sec. 6034.) The tools, team, implements or stock in trade of any mechanic, miner, or other person to the value of $300, are exempt. (Sec. 6037.) Workmen's compensation payments are exempt. (Sec. 4336.) No exemption in an action for the purchase price. (Sec. 6037.)

Homestead.—Resident householder or person over 60 years of age may claim a homestead of any number of lots in a city, or acres in the country, so that the value does not exceed $2,500. (Laws of 1925, Ch. 17.)

Waiver of Exemptions.—No provision.

Abstract of Law of Property Rights of Married Women

Alabama.—A married woman may make contracts to the same extent as an unmarried woman, except that she may not become surety for her husband, and her husband must join in a deed or mortgage of real property, unless he has abandoned her, or is a non-resident of the state, is insane, or is in prison for a crime for a period of two years or more.

Arizona.—A married woman of the age of 21 years and upwards has the same legal rights as men, except the right to make contracts binding the common property of the husband and wife. She is also subject to the same legal liabilities as men of the age of 21 years and upwards. Married women have exclusive control of their separate property, which is not subject to the debts of the husband, and may sell, transfer, mortgage or otherwise convey the same as if they were unmarried. Personal property, not the separate property of the wife, may be disposed of by the husband only. All deeds and mortgages affecting real estate, not the separate property of the wife, must be executed by both the husband and the wife, with exception of unpatented mining claims.

Arkansas.—A married woman has the same rights to contract as an unmarried woman.

California.—A married woman is under no disability with reference to contracting and conveying her property. California has the community property law under which all property acquired after marriage by either husband or wife becomes community property; but whenever property is conveyed to a married woman by an instrument in writing, the presumption is that the title vests in her as her separate property.

Colorado.—A married woman may enter into contracts and carry on business to the same extent as an unmarried woman, and may convey her real and personal property without joining her husband.

Connecticut.—A married woman may enter into contracts, and convey and receive conveyances of real estate directly to and from her husband. Neither husband nor wife is liable for the debts of the other, except that both are liable for necessary services of a physician rendered the husband, wife, or their minor children while residing in the family of their parents, for the rental of any premises occupied by the husband or wife as a residence and reasonably necessary to them for such purpose, and for any article purchased by either for the support of the family or for the joint benefit of both.

Delaware.—A married woman may enter into contracts and convey property to the same extent as an unmarried woman. In the case of the real estate, a husband has a right of courtesy unless he has abandoned her without just cause.

District of Columbia.—A married woman has full liberty of contract.

Florida.—A married woman who resides in the state of Florida is not authorized to take charge of or control her estate, to contract and be contracted with, to sue and be sued, until she applies by petition in chancery to the circuit court for the circuit where she resides for license to take charge of and manage her own estate and property and to become a free dealer, first publishing notice of her intention so to do in some newspaper in the county and afterwards publishing a copy of the decree in such newspaper. Husband and wife shall join in all sales, transfers and conveyances of the property of the wife, other than personal property and choses in action.

(Sec. 3949 of Rev. Gen. Stat. (as amended by Laws 1927, S.B. No. 4).)

Georgia.—A married woman may generally enter into contracts freely, but she cannot bind her separate estate by any contract of suretyship, by any assumption of the debts of her husband. A sale of her separate estate to a creditor of her husband in extinguishment of his debts is absolutely void. She may make contracts with her husband and if the contract is attacked for fraud by the creditor of either, the burden is on the husband and wife to show that the transaction was fair.

Idaho.—Idaho has the community property law in effect. However, the property acquired by a wife by gift, devise, or bequest, before her marriage, and that afterwards acquired shall remain her separate property. She may dispose of her separate property, and sell and convey her real and personal property as a married man may in relation to his real and personal property. The husband has control of the community property, but he may not convey or encumber it without the wife joining in the conveyance.

Illinois.—A married woman may enter into contracts to the same extent as an unmarried woman.

Indiana.—A married woman may enter into contracts to the same extent as an unmarried woman, except that she may not contract to sell, convey or mortgage her real estate, unless her husband joins in such contract, conveyance or mortgage.

Iowa.—A married woman may enter into contracts freely. The reasonable and necessary expenses of the family and the education of the children are chargeable upon the property of both husband and wife, or either of them, and in relation thereto they may be sued jointly or separately.

Kansas.—A married woman may enter into contracts and carry on business to the same extent as an unmarried woman.

Kentucky.—A married woman may enter into contracts freely, except that she may not be liable as a surety, unless by deed duly recorded, setting property apart for such purpose. Her husband must join in any contract to sell, convey or mortgage her real estate. A gift, transfer or assignment of

personal property between husband and wife is invalid as to third persons, unless it be in writing, acknowledged and recorded and not fraudulent as to creditors or purchasers.

Louisiana.—Married women are fully emancipated and empowered to make contracts of all kinds, or to assume or stipulate for obligations of all kinds, in any form or manner now permitted by law. They may sue and be sued, and dispose of or hypothecate their property, by way of security or otherwise, for the benefit of their husbands or of the community between them and their husbands, providing that they are 18 years of age; they are also subject to the existing law relating to the matrimonial community of acquests and gains. (Act 283 of Acts of 1928.)

Maine.—A married woman may enter into contracts as freely as an unmarried woman, except that she cannot convey her property without the joinder or assent of the husband so as to bar his right or interest by descent in the estate so conveyed.

Maryland.—A married woman may enter into contracts and hold property as freely as if she were unmarried. No acquisition of property passing from one spouse to another shall be valid if the same has been made in prejudice of the rights of subsisting creditors, who must assert their claims within three years after the acquisition of the property or be absolutely barred. (See laws of 1929, Chap. 398.)

Massachusetts.—Before a married woman may go into business so as to be able to contract freely, she must cause to be recorded in the clerk's office in the city or town in which she does or proposes to do such business, a certificate stating her name and that of her husband, the nature of the business and the place where it is or is proposed to be carried on, giving, if practicable, the street and the number on the street and the name, which shall not be her husband's, under which she proposes to carry on business. If the nature of the business or the place where, or the name under which it is carried on, is changed, a new certificate must be recorded. If she fails to cause such certificate to be recorded, her husband may cause it to be recorded. If the certificate is not recorded, the personal property employed in such business shall be liable to be attached as the property of the husband and to be taken on execution against him, and the husband shall be liable upon the contracts lawfully made in the transaction of such business in the same manner and to the same extent as if such contracts had been made by himself.

A married woman is liable jointly with her husband for debts due, to the amount of $100 in each case, for necessaries furnished with her knowledge or consent to herself or her family if she has property to the amount of $2,000 or more,

Upon her marriage, the property of a woman remains her separate property.

Michigan.—All the real and personal property of every woman acquired before marriage or to which she may afterwards become entitled remains her property, and does not become liable for the debts of her husband. The property may be contracted, sold, or otherwise disposed of by her in the same manner and with like effect as if she were unmarried. She is not allowed to engage in business as a partner with her husband, nor is she liable upon surety contracts. Married women are competent to bind themselves jointly with their husbands upon a written instrument so as to bind the real estate held by them in the entirety or the real estate acquired by either as the survivor of the other, and all profits therefrom, and all personal property and choses in action owned by them jointly with a right of survivorship. (Sections

2, 3 and 4 of Act No. 158 of Public Acts of 1917 as amended by Act No. 287, Public Acts of 1929.)

Minnesota.—All property owned by a woman at the time of her marriage continues to be her separate property, but the husband must join in any contract or conveyance relating to the homestead.

Husband and wife may not contract with each other with reference to real estate, or any interest therein.

Mississippi.—A married woman may make any contract with reference to her property and is fully emancipated from all disability. Sales of personal, as well as real property, between husband and wife are not good as to third parties unless made in writing, signed, acknowledged and recorded.

Missouri.—A married woman is enabled to enter into contracts the same as an unmarried woman. She is entitled to all exemption and homestead rights of the head of a family, except in cases where the husband has claimed such rights for the protection of his own property.

Montana.—A married woman may enter into contracts as freely as an unmarried woman. All property owned by her before marriage and acquired by her after marriage remains her separate property.

Nebraska.—A married woman may enter into contracts, carry on business and convey property to the same extent as a married man may in relation to his property.

Nevada.—All of the property owned by the wife before marriage or acquired after marriage by gift, bequest, devise or descent, remains her separate property. All other property acquired after marriage is community property and under the management of the husband, although the wife must join in the conveyance or mortgage of a homestead. She has the control of the earnings of herself and of her minor children living with her when such earnings are used in the care and maintenance of the family.

In order for a married woman to engage in business and to have her affairs free from the control of her husband and her profits not subject to the claims of his creditors, she must apply to the district court for leave to transact business under her own name and on her own account. Advertising in a newspaper for four successive weeks, stating that she intends to make application in court on a certain day, is necessary. If the judge is satisfied that the application is bona fide and not made for the purpose of defrauding the creditors of her husband, he is authorized to grant the application. If the application is granted, the wife's earnings from said business are free from her husband's debts, and the husband is not liable for any of his wife's debts contracted with reference to the business.

New Hampshire.—A married woman may enter into contracts as freely as an unmarried woman, except that she may not become surety or guarantor for her husband.

New Jersey.—Any married woman shall have the right to bind herself by contract in the same manner and to the same extent as though she were unmarried, which contracts shall be legal and obligatory and may be enforced at law or in equity, by or against such married woman in her own name apart from her husband. (Chap. 71, Laws of 1929.) A conveyance by a married woman over the age of 21, of any real estate shall be valid as though the husband had joined, provided her husband does convey his interest by a separate deed and provided her conveyance is duly acknowledged. (Chap. 78, Laws of 1929.) Where an administratrix or executrix is a married woman and has purchased, or shall hereafter purchase, any realty, such land may be sold and conveyed by her in her representative capacity without court

order and without her husband joining in, as if said executrix or administratrix were unmarried. Chap. 146, Laws of 1930, effective April 15, 1930, validates certain deeds heretofore executed by married women, which deeds have been recorded for a period of at least 30 years before any action is begun by anyone claiming under the husband.

New Mexico.—New Mexico has a community property law in effect. The husband has sole power of disposition of personal property other than testamentary, except as regards the separate property of the wife. Husband and wife must join in all deeds and mortgages with reference to community property, but either may convey or mortgage separate property without the other joining. There are no disabilities with reference to contracts of a married woman.

New York.—A married woman has all the rights of an unmarried woman with reference to her property and the right to enter into contracts, including contracts with her husband.

North Carolina.—A married woman has all the rights of an unmarried woman with reference to her property, but no conveyance of her real estate shall be valid unless made with written assent of her husband and her examination of the same taken and certified as required by law. A contract between a husband and wife that affects any part of her real estate or the income thereof, or impairs the capital of her personal estate, or the income thereof, for a longer period than 3 years is invalid unless such contract is in writing and duly proved.

North Dakota.—A married woman may enter into contracts to the same extent as an unmarried woman.

Ohio.—A married woman may enter into contracts and dispose of her property as freely as an unmarried woman.

Oklahoma.—A married woman has the same rights as an unmarried woman.

Oregon.—A married woman may enter into contracts as freely as an unmarried woman. She may dispose of her property in the same manner that her husband can dispose of property belonging to him. The expenses of the family and the education of the children are chargeable upon the property of both husband and wife, and they may be sued jointly or separately in relation thereto.

Pennsylvania.—A married woman may enter into contracts freely, except that she shall not become an acccommodation endorser, maker, guarantor or surety for another. She may dispose of property but not mortgage or convey real property unless her husband joins in such mortgage or conveyance. She also may make a conveyance of real estate to her husband. A married woman may sue or be sued, but she may not sue her husband except in proceedings for divorce or to recover her separate property.

Rhode Island.—A married woman may enter into contracts, and carry on business to the same extent as an unmarried woman, except that she is not allowed to enter into any trading partnership with her husband. The property of a married woman acquired before or after marriage remains her separate property. The husband and the wife may be sued jointly or severally for the support of their minor children.

South Carolina.—A married woman may enter into contracts and carry on business to the same extent as an unmarried woman. She may sue or be sued apart from her husband. She may acquire and dispose of property by legal conveyance to the same extent as though she were unmarried.

South Dakota.—A married woman may enter into contracts as freely as an unmarried woman. Her property acquired before and after marriage remains her separate property. She is jointly and severally liable with her husband for all the necessaries of life purchased by either for family use while they are living together.

Tennessee.—A married woman is emancipated from all disabilities of the common law, and she may acquire and dispose of property, enter into contracts, sue and be sued to the same extent as if she were unmarried.

Texas.—Texas has the community property law in effect. All property acquired by either the wife or husband during coverture except that acquired by gift, devise or descent, or accruing from property owned by the wife or husband before marriage, is the common property of both, and during coverture can be disposed of by the husband only. The wife has control over her real and personal property, but the husband must join in a conveyance or an encumbrance of the real estate; and the joint signature of the husband are necessary to a transfer of stocks belonging to her, or which she may have control of. (See Laws of 1929, Chap. 32.)

Utah.—All property acquired before or after marriage remains the separate property of the married woman. It may be conveyed, devised or bequeathed by her as if she were unmarried. She may enter into contracts as freely as an unmarried woman.

Vermont.—A married woman may enter into contracts as freely as an unmarried woman, except that she may not become surety for her husband's debts except by the way of mortgage. She may convey her separate property freely, except that in the connection with a homestead interest there must be a joint deed.

Virginia.—A married woman may enter into contracts, sue and be sued, engage in a trade or business, and acquire, hold and dispose of property, as if she were unmarried.

Washington.—Washington has the community property law in effect, the husband having the control and management of such property. Income from separate property of the husband or wife remains his or her separate property. A married woman may enter into contracts as freely as an unmarried woman.

West Virginia.—A married woman has not been given specific power by statute to make contracts, although she may sue and be sued. Her separate property remains her property and is not subject to the control of her husband.

Wisconsin.—A married woman has full freedom of contract, but is not permitted to transact business in her own name unless the husband has deserted her or shall from drunkenness, profligacy, or any cause neglect or refuse to provide for her support or for the support or education of her children. With reference to her separate estate, she may enter into and transact business in her own name. Women have the same privilege under the law as men in choice of residence for voting purposes, holding and conveying property, custody of children and in all other respects.

Wyoming.—A married woman may enter into contracts, carry on business, sue and be sued and, by deed or mortgage, convey her real estate to the same extent as an unmarried woman. All property owned or acquired by a married woman either before or after marriage remains her separate property. The necessary expenses of the family are chargeable on the property of both husband and wife.

Canada.—In the provinces of the Dominion, generally, a married woman holds all her property and earnings free from the control of her husband. It

is liable for her debts before marriage, and her husband is not. She may manage it and bequeath it. She is entitled to dower, but there is no tenancy by courtesy. In the Province of Quebec the law is modified by the French law. There all the personal property and gains of both parties are put together and form the community property, which the husband administers. Each can bequeath only his or her interest, and the heirs of each inherit the interest of each.

GENERAL RELEASE OF ALL DEMANDS

KNOW ALL MEN BY THESE PRESENTS, *That I, A. B., of as well for and in consideration of the sum of one dollar, to me in hand paid by C. D., of , at and before the sealing and delivery hereof, the receipt whereof I do hereby acknowledge, as for divers other good causes and valuable considerations, me thereto specially moving, have remised, released, quitclaimed, and forever discharged, and by these presents, for myself, my heirs, executors and administrators, do remise, release, quitclaim, and forever discharge the said C. D., his heirs, executors and administrators, and every of them, of and from all, and all manner of action and actions, cause and causes of action and actions, suits, debts, dues, duties, sum and sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, agreements, promises, variances, damages, judgments, extents, executions, claims and demands, whatsoever, in law or equity, or otherwise howsoever, which against the said C. D. I ever had, now have, or which I, my heirs, executors, or administrators hereafter can, shall, or may have, for, upon, or by reason of any matter, cause, or thing whatsoever, from the beginning of the world to the day of the date of these presents.*

IN WITNESS WHEREOF, *I have hereunto set my hand and seal, this day of , A. D. 19 .*

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF: } *A. B.* [SEAL]

APPRENTICE AGREEMENT

THIS INDENTURE WITNESSETH THAT *by and with the consent of hath put himself, and by these presents doth voluntarily, and of his own free will and accord put himself Apprentice to to learn the art, trade and mystery of and after the manner of an Apprentice to serve the said from the day of the date hereof for and during the term of years months days ending on the day of 19 , next ensuing.*

DURING *all of which time the said Apprentice doth covenant and promise that he will serve the said faithfully, keep secrets, and obey lawful commands; That he will do no damage himself, nor see it done by others, without giving notice thereof; that he will not waste goods, nor lend them unlawfully; that he will not contract matrimony within the said term; that he will not play at cards, dice, or any other unlawful game whereby his employers'*

interests may be injured; that he will neither buy nor sell with his own goods or the goods of others without license from his employer; that he will not absent himself day or night from his employers service, without leave, nor haunt ale-houses, taverns, or play-houses, but in all things behave himself as a faithful Apprentice ought to do, during the said term. And the said on part, doth covenant and promise, that will use the utmost of endeavors to teach or cause to be taught and instructed, the said Apprentice in the art, trade, or mystery of and will procure and provide for him sufficient meat, drink, clothing, lodging, washing and mending fitting for an Apprentice, during the said term, and will give him schooling during the said term

And *for the true performance of all and singular the covenants and agreements aforesaid, the said parties bind themselves each unto the other, firmly by these presents.*

In Witness Whereof, *the said parties have interchangeably set their hands and seals hereunto. Dated the day of in the year of our Lord one thousand nine hundred and*

SEALED AND DELIVERED IN THE PRESENCE OF US: } [L. S.] [L. S.] [L. S.]

PROBATE OF ACCOUNT

County of ss.

The Commonwealth of

On the *day of Anno Domini 19 , before me, a notary public for the Commonwealth of personally appeared who being duly sworn or affirmed, according to law, doth depose and say, that the annexed account against is correctly copied from the books of Original Entry of that the charges were made in said books at or about the time of their respective dates; that the goods for which said charges were made were sold and delivered as charged; that the charges are correct, and the account just and true as stated; that there is now due and owing thereon the sum of* $\frac{}{100}$ *Dollars, that no part of said sum has ever been paid or in any manner settled, and that there are no deductions or offsets of any kind, except such as are therein specified and credited. Sworn or affirmed to, and subscribed before me, this day of A. D. 19*

Witness *my hand and seal, the day and year aforesaid.*

[L. S.]

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS THAT
have constituted, made and appointed, and by these presents do constitute, make and appoint lawful Attorney for and in name and stead, and to use, to ask, demand, sue for, levy, recover and receive, all such sum and sums of money, debts, rents, goods, wares, dues, accounts, and other demands whatsoever, which are or shall be due, owning, payable, and belonging to or detained from in any manner of ways or means whatsoever, giving and granting unto said Attorney by these Presents full and entire power and authority, in and about the premises, to have, use, and take all lawful ways and means, in name for the purposes aforesaid; and upon the receipt of any such debts, dues, or sums of money aforesaid, acquittances, or other sufficient discharges, for and in name to make, seal and deliver, and generally all and every other act and acts, thing and things, device and devices in the law whatsoever needful and necessary to be done in and about the premises, for and in name to do, execute and perform, as fully, largely and amply, to all intents and purposes, as might or could do, if personally present, or as if the matter required more special authority than is herein given; and Attorneys, one or more under for the purpose aforesaid, to make and constitute, and again at pleasure to revoke; ratifying, allowing, and holding for firm and effectual, all and whatsoever said Attorney or substitute shall lawfully do in and about the premises, by virtue hereof.

IN WITNESS WHEREOF, *have hereunto set hand and seal the day of in the year of our Lord one thousand nine hundred and twenty*

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF: [L. S.] [L. S.]

It is advisable to attach acknowledgment, particularly when granted to a non-resident.

ACKNOWLEDGMENT

This day of , A. D. 192 , personally appeared before me, the above-named and acknowledged the foregoing Power of Attorney to be act and deed, and desired the same might be recorded as such, according to law.

WITNESS *my hand and seal, the day and year aforesaid.*

[L. S.]

PARTNERSHIPS

Definition—General Nature—Powers of Partners—Rights and Remedies of Creditors—Duties and Liabilities of Partners inter esse—*Dissolution—Accounting and Distribution—Limited Partnership—Special Partners—Partnership Association—How Dissolved—Uniform Partnership Act.*

THE general tendency toward the concentration of capital characteristic of the present age renders the subject of partnership associations of widespread interest to the general business public and the law applicable to their regulation becomes a matter of considerable importance to those engaged in either mercantile or professional pursuits.

When two or more parties agree to form a partnership, they incur certain responsibilities, both individually and collectively. It consequently becomes essential to investigate the status of a partnership in order to definitely ascertain when such a relationship may be said to exist, which is a matter of no inconsiderable difficulty. For example, an agreement between two or more to share the profits of a certain enterprise does not necessarily constitute a partnership. If John Doe lends Richard Roe a certain sum of money with which to engage in business, in consideration of which Richard Roe agrees to allow John Doe sixty per cent of the net profits of said business, he does not thereby become a partner. A trader, by undertaking to pay a creditor a certain share in the net profits of his business, does not make such creditor a partner, nor does an assignee of a debtor's share in a firm become a partner therein although entitled to a share in the net profits. Therefore, the fact that two parties agree to share in the profits of a joint enterprise is not conclusive evidence of the existence of a partnership.

What then, is the true test by which we may determine whether or not a partnership exists? A partnership is created by the agreement, either expressed or implied, between two or more parties to carry on a business in common with a view to profit. Parties may, however, subject themselves to the liabilities of partners in the absence of any intention to become such, but if they hold themselves forth to the public as partners, receiving credit as such, they cannot avoid responsibility to those deceived by their actions. It is the function of the court to

to determine whether or not individuals associated together in business are partners and the court is guided in its determination by the maxim that "Actions speak louder than words."

Whether or not co-proprietorship is exercised by those interested in a business is another means by which we test the existence of a partnership, but inasmuch as several elements enter into the formation of every partnership relation no single test can be made definite. However, when two or more parties engage in business together, exercise joint control over the firm business, have a common property in the assets of the firm, and share in the profits or losses of the business, either equally or in proportion to their respective contributions thereto, a legal partnership will be said to exist. The elements incidental to a partnership as thus defined, are controlling in determining whether this relationship has been created by two or more individuals who associate themselves together in business.

A partnership agreement will be invalidated if any of the partners are shown to be legally incompetent to enter into a contract. The contractual incapacity of certain classes of individuals has been largely removed by recent statutes, so that today lunatics, minors, alien enemies and corporations in the absence of charter authority are the only exceptions to those capable of entering into a contract of partnership.

As we observed in contracts, a consideration is necessary to support every agreement, so an agreement to form a partnership must impose mutual obligations upon its members to be binding upon them.

To summarize, the formation of a partnership may be effected by an agreement, supported by a consideration, between two or more parties having legal capacity to contract, jointly to conduct a business the profits of which are to be shared between them.

The Uniform Partnership Act recommended by the conference of Commissioners on Uniform State Laws, and up to 1931 adopted by sixteen of the States of the Union defines a partnership as an association of two or more persons to carry on as co-owners a business for profit.

The receipt by a person of a share of the profits of a business is *prima facie* evidence that he is a partner in the business, but no such inference shall be drawn if such profits were received in payment of a debt by instalments or otherwise, or as wages of an employee or rent due a landlord, or as an annuity to a widow or representative of a deceased partner, or as interest on a loan, though the amount of payment vary with the profits of the

business, or as the consideration for the sale of the good-will of a business or other property by instalments or otherwise.

General Nature of a Partnership.

Having determined the general principles which govern the formation of a partnership, our next inquiry will be directed to ascertain what status it acquires; what is the general nature of a partnership? A partnership may transact business without the adoption of a firm title, although a name is ordinarily agreed upon. The firm name may be that of either one or all the members thereof, or may be purely fanciful. At common law no individual or body of persons can acquire the exclusive right to a name, but a court of law will restrain a partnership from using the same name as another firm in the same business, where to do so would operate as a fraud upon said competitor or the public.

When a firm has adopted a name, the authorized signature of the partnership is, in the eyes of the law, the signature of each partner, and conversely notes signed with the individual names of the partners or with the name of but one of them will bind the firm if they were issued as firm contracts. If the partnership has adopted an arbitrary name, which is not that of a natural person, a deed of real estate to the firm passes no title at law, it being necessary for such a firm to take title in the name of one or all of its members.

Fictitious Names.

Many co-partnerships adopt as a business title a fictitious name, such as American Eye Clinic or The Star Braid Works. In order to avoid the difficulty of ascertaining who the real proprietors of a business may be, many legislatures have passed statutes forbidding anyone from conducting business under any assumed or fictitious name, unless the person or persons conducting the same shall have first filed in the office of the Secretary of the Commonwealth, and in the office of the Prothonotary, a certificate, under oath, setting forth the real name or names and addresses of all the persons owning or interested in said business, and also the name, style or designation under which said business is being or will be carried on.

All property originally brought into a partnership stock or subsequently acquired, by purchase or otherwise on account of the partnership, is partnership property. Any estate in real property may be acquired in the partnership name, and title so acquired can be conveyed only in the partnership name.

Every partner is an agent of the partnership for the purpose

of its business and the act of every partner is binding on the partnership. Unless authorized by all the partners, one or more of the partners have no authority to assign the partnership property in trust for creditors or on the assignee's promise to pay the debts of the partnership, to dispose of the good-will of the business, to confess a judgment, to submit a partnership claim of liability to arbitration or reference, or to do any other act which would make it impossible to carry on the ordinary business of the partnership.

Where title to real estate is in the partnership name, any partner may convey title by a conveyance executed in the partnership name.

It is well settled that partnership real estate is regarded as personalty for the purpose of satisfying claims of firm creditors. It will also be observed that partnerships cannot claim the benefit of any exemption law which reserves to debtors certain property or a specific sum of money, which is altogether a personal privilege.

A firm may at any time dispose of its property in the ordinary course of business with the limitation that firm creditors be not defrauded thereby. That each partner is liable for firm debts to the extent of his individual fortune is unquestioned, and consequently firm creditors are not defeated by the transfer of firm property, provided one or more of the partners remain solvent. Each partner is an agent of the firm, and the act of one partner is the act of the firm and binding upon all. A partner, to bind his co-partners, must, however, act within the scope of the partnership business. One partner is not permitted to introduce another member into the firm without the acquiescence of his co-partners, as mutual confidence in the character of a partner lies at the foundation of every partnership agreement.

Partnership property and partnership creditors are distinct from the individual property of its members and their individual creditors. It frequently occurs that the claims of firm creditors and those of individual creditors conflict. Partners subject themselves to a double liability; in the first place, partnership property is liable to the creditors of the partnership to the extent of the partnership indebtedness, and if the firm property is insufficient to satisfy firm creditors, the personal property of the partner becomes liable. If one partner is compelled to pay the firm debts he may compel his co-partners to share his loss by a bill in equity. A firm creditor will not be allowed to satisfy his debt out of the separate property of a partner to the exclusion of the individual creditor of a partner, the principle to be applied in such

cases providing that firm creditors shall have priority over firm property and individual creditors over the individual property of the debtor partner. When, however, the firm property is insufficient to satisfy firm creditor, he may have recourse against the separate property of a partner, providing his separate creditors have been paid. In the event of a firm owning no property, firm creditors are allowed to share equally (*pari passu*) with the separate creditors the property of the several partners.

Any admission or representation made by a partner concerning partnership affairs within the scope of his authority is evidence against the partnership, and any notice to any partner of any matter relating to partnership affairs and any knowledge acquired by a partner which could or should have been communicated to the co-partners, shall operate as notice or knowledge chargeable to the partnership.

Liability.

A partnership is liable for the wrongful acts or omissions of any partner acting in the ordinary course of the partnership business, and is liable to make good any loss occasioned by the misapplication by any partner of any money or property of a third person.

All partners are liable jointly and severally for everything chargeable to the partnership and jointly for all other debts and obligations of the partnership. A person admitted as a partner in the existing partnership is liable for all obligations of the partnership arising before his admission, as though he had been a partner when such obligations were incurred, except that this liability shall be satisfied only out of partnership property.

Relations of Partners to One Another.

The rights and duties of the partners in relation to the partnership are determined, subject to any agreement between them, by the following rules:

(*a*) Each partner shall be repaid his contributions, whether by way of capital or advances to the partnership property, and share equally in the profits and surplus remaining after all liabilities, including those to partners, are satisfied; and must contribute towards the losses, whether of capital or otherwise, sustained by the partnership, according to his share in the profits.

(*b*) The partnership must indemnify every partner in respect of payments made and personal liabilities reasonably incurred by him in the ordinary and proper conduct of its business, or for the preservation of its business or property.

(*c*) A partner who, in aid of the partnership, makes any payment or advance beyond the amount of capital which he agreed to contribute, shall be paid interest from the date of the payment or advance.

(*d*) A partner shall receive interest on the capital contributed by him only from the date when repayment should be made.

(*e*) All partners have equal rights in the management and conduct of the partnership business.

(*f*) No partner is entitled to remuneration for acting in the partnership business, except that a surviving partner is entitled to reasonable compensation for his services in winding up the partnership affairs.

(*g*) No person can become a member of a partnership without the consent of all the partners.

(*h*) Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners; but no act in contravention of any agreement between the partners may be done rightfully without the consent of all the partners.

Powers of Partners.

The general powers of partners are implied from the partnership relation, and need not be set forth in the partnership articles, each partner being "the general and accredited agent of the partnership" in the management of its business.

To clearly understand the scope of a partner's agency it is necessary to distinguish the existence of the firm as a separate entity from the existence of the partners composing it. Strictly speaking, one partner does not act as the agent for the other partners, but as the agent of the firm of which they are members.

Every general partner is regarded as the agent of the partnership in the transaction of the firm's business. As such he has authority to do whatever is necessary to carry on such business in the ordinary manner, and for this purpose may bind his co-partners by his acts.

The powers of a partner are regulated largely by the nature of the partnership business. A partner in a firm engaged in buying and selling goods has implied authority to dispose of the entire stock of goods, but a partner in a firm of farmers has no power to sell the animals which have been bought by the firm and are necessary for use in cultivating the farm. Again, if a partnership is formed for the increase and improvement of a flock of sheep or cattle, a partner would have no power to dis-

pose of the entire flock. Thus it will be seen that the powers of a partner depend upon the nature of the partnership business.

In those cases where a partner has power to sell firm property he may bind his firm by all such acts as are incidental to a sale. For example, if a partner should sell a certain lot of fruit trees and should agree that the purchaser need pay for only those trees which live, such a statement, being incidental to the sale, would be a condition binding upon the partnership. Agreements made by a partner in selling goods with reference to their fitness for a particular purpose or their quality will be binding upon the firm, being incidental to the sale.

This power of sale which exists in every normal partnership may be relinquished by one or more of the partners, either by an express agreement to this effect or by conduct. An agreement by a partnership composed of A, B and C provided that A and B were to have the entire management of the firm's business, while C was not to interfere therein in any way. Under this agreement C's power of agency was abandoned. If the terms of this agreement were known to the world, as is the case of joint-stock companies, or was known to those dealing with the firm, C would not be able to bind the partnership by any acts, even though within the scope of the partnership business.

If a partner sells his interest in the firm, or permits it to be sold on legal process, his agency for the partnership is terminated.

We have observed that a partner's power of sale is limited to transactions connected with the firm's business, and consequently a sale of firm property by a partner to pay his individual debts will be invalid, unless actual power to do so was given him by his co-partners and no firm creditors be defrauded thereby.

The scope of a firm's business within which the power of a partner is limited depends upon its nature, and is determined by the usual and ordinary course in which it is carried on by those engaged in it in the same locality. Thus it has been held that a member of a firm of machinsts has no implied authority to bind the firm by a promise to pay to a fund of an association organized to keep a harbor free from ice, because to do so would not be an act within the ordinary course of the firm's business.

It would be impossible to enumerate the various acts which a partner is authorized to do, and which would bind the firm. The nature of the partnership business is a question of fact to be decided by a jury upon a consideration of all the circumstances of each particular case. Our inquiry will be limited to the most important and characteristic powers possessed by a general partner.

The power of a partner to purchase property on the credit of the firm has never been questioned in the case of an ordinary commercial partnership. Such a relation could not serve the purpose for which it was organized unless the partners had power to pledge the credit of the firm for the price of goods and wares necessary in the business carried on by it.

A partner, whether in a trading or non-trading partnership, has the further power of binding the firm by contracts for the hire of such servants and employees as may be required to conduct the business properly. It is a general rule of law that an agent cannot delegate his authority to a sub-agent, but a partner in hiring a servant or employee does not act in the capacity of an agent. All the partners "are regarded as being present and sanctioning the engagements and contracts into which they may singly enter within the scope of their partnership affairs."

Another general power incident to every normal partnership is the authority of each partner to collect the debts due the firm and give receipts or releases covering the same.

One partner may also bind his co-partner by instituting legal proceedings, and the act of one partner is the act of the firm.

Commercial partnerships are frequently compelled to negotiate loans to carry on their business, and, therefore, each partner has the power to pledge the firm's credit in borrowing money for the purpose of its business. If this privilege is specially denied to one or more of the members of a firm, the power to borrow on the firm's credit being restricted to a particular member or members, any one having knowledge of this fact could not hold the firm liable for money loaned to one of its members not privileged to borrow the same.

In the case of a non-trading partnership, no member of the firm has the power to borrow money on its credit, such an act not being incidental to the business of such a company. If in the case of a firm of physicians, for instance, it becomes necessary to raise money, it must be raised by the individuals composing the firm, and not by one member thereof.

A member of a trading partnership may furthermore issue negotiable paper in the name of the firm, which will be binding upon the firm even if it was not issued for the purposes of the firm's business. This doctrine is based upon the principle that it would be manifestly unjust to require a *bona fide* holder of a bill or note indorsed by one of several partners to apply to each of the other partners to ascertain whether they consented to the indorsement. A member of a non-trading partnership has no

such right to bind his firm by issuing negotiable paper of any kind, this power being limited to trading partnerships only.

The distinction between trading and non-trading partnerships is not recognized to the same extent in Pennsylvania as it is in most of the other states of the Union, but the distinction is, nevertheless, important. A partnership is regarded as a trading one if it contemplates the periodical or continuous purchasing, not as incidental to an occupation, but for the purpose of selling again the thing purchased. Every trading partnership habitually indulges in buying and selling, but this fact in itself does not furnish the basis of a partner's power to bind his firm by negotiable paper, because if it was the custom of a particular firm to buy and sell for cash only no power to issue negotiable paper would be implied from the buying and selling feature of the business.

Firms of brokers, farmers, architects, ship carpenters, stevedores, livery stable keepers, theater managers and real estate agents are among those judicially declared to be non-trading partnerships.

A partner has the power to bind his co-partners by admissions or representations made concerning the partnership affairs and in the ordinary course of its business, in the absence of which authority a partner could not discharge properly his duties as agent for the firm. Consequently a statement by a partner of the amount due by the firm to a creditor or employee is binding upon the partnership. Such admissions or representations to be binding upon the partnership must be made in the ordinary course of business; otherwise, even though relating to partnership affairs, they will only be binding upon the partner making them, and not upon his co-partners.

A lease of partnership real estate by one partner in his own name inures to the benefit of the firm, the partners being agents of each other in the partnership business, and a lease of such realty when brought into the firm is as much a partnership transaction as the buying and selling of goods. The acts of one partner within the scope of his authority are binding on his co-partners, and if he acts in good faith, he is not responsible for any loss arising from mere mistake or error of judgment.

A Partner's Power to Render the Firm Liable in Tort.

We have thus far discussed the power of a partner to subject his co-partners to contractual liabilities, *i. e.*, liability arising out of a contract, and have observed that this power is governed by the nature and scope of the partnership business. The same general principle applies with reference to a partner's power to bind

his firm by his torts, which comprise all such unlawful acts which do not arise out of a contract, but for which the law provides the injured party with a right of action for damages against the wrongdoer. Even though the other partner or partners are wholly ignorant of the wrongful act of a co-partner, or even though they made every effort to prevent the same, they are nevertheless liable for the torts of any member of the firm provided the act was done in the ordinary course of the firm's business.

It has been held in some jurisdictions that acts or omissions in the course of the partnership business, which are in violation of the law, will only implicate those who are guilty, but the weight of authority is to the effect that if the act or omission is illegal, the firm is liable. Thus if a member of a firm of warehousemen refuses to deliver the goods of a customer unless illegal fees are paid, the firm would be bound to pay damages for the wrongful or illegal act of one of its members. It has also been held that a physician is liable in damages for the negligent act of his co-partner in the treatment of a patient.

A partner has the power to institute and carry on ordinary legal proceedings for the recovery of firm property, the protection of its interests or the redress of its wrongs, and acts done by him in this connection will be binding upon the firm. To illustrate, if a partner in a suit against a firm debtor orders an attachment to be levied upon the goods of a third party, assuming that they are the goods of said firm debtor, his act is the act of the firm, and the partnership becomes liable therefor.

A partner may also bring criminal proceedings against anyone wronging the firm without consulting the remaining partners, provided action is taken upon probable cause and without malice. If, however, a partner secures the arrest and imprisonment of a person, not in performance of any duty owing to the firm of which he is a member, but merely in the performance of his duty as a citizen, the partner so acting is alone responsible for his acts.

The firm and every member of it are responsible in damages for the fraudulent acts of one of the partners done in the ordinary course of the partnership business. Suppose, for example, that goods are delivered to a firm of commission merchants for sale, and one of the members of the firm should, by fraudulent representations regarding the buyer's financial standing, induce the owner to make a credit sale to a third person, the mere fact that the co-partners were ignorant of the false representations would constitute no defense to an action for damages on the part of the injured party.

Likewise if one partner publishes a libel or is guilty of a slander, made to secure some advantage to the firm, the partnership will be liable. In a well-known case one member of a firm of furniture dealers published the following placard upon a piece of furniture: "This was taken back from Dr. ———, as he would not pay for it; for sale at a bargain. Moral—Beware of dead beats." Although it appeared doubtful whether the above was to be regarded as a firm advertisement, the court held that the libelous matter was published for the purpose of venting the personal spite of one of the partners, and consequently the other partner, who knew nothing of the matter, was exonerated from liability. If a partner in a manufacturing business publishes the false statement that a rival manufacturer is infringing a patent which they own, that an injunction has been issued and the competitor's business closed up, this is a representation directly appertaining to the firm's business, and therefore every member becomes liable.

It must be borne in mind that, although every member of a firm is liable in damages for the tort or wrongful act of a co-partner, if committed in the course of the partnership business, only the member actually guilty of the wrong is punishable by imprisonment. A warrant cannot be obtained for the arrest of an innocent partner by one who has been defrauded by the fraudulent statements of a co-partner. In view of the liability of every partner for the acts of one, a man to be protected should exercise prudence in choosing a partner.

Rights and Remedies of Creditors.

Firm creditors are also creditors of the individual partners composing it, the members of a firm being not only jointly liable but also liable to the extent of their individual fortune for all firm obligations. Hence the question to engage our attention will relate to the rights and remedies of the creditors of a partnership.

As pointed out heretofore, the law does not regard a partnership as a separate entity, like a corporation, but regards it rather as a collection of individuals associated together in a business in common with a view to profit. Consequently all actions brought against a partnership must be brought against the individual members composing it. In view of this fact, judgments obtained by a firm creditor constitute a lien against and is binding upon both the firm property and the property of every partner.

Partnership property must be appropriated to the payment of partnership debts, and a creditor of one partner has no claim

to the partnership assets until the partnership debts have been first paid. An attachment made by a creditor of one partner will be subject to the paramount claims of the partnership creditors. For example, if a creditor of A attaches his interest in the property of A, B and Company, and a creditor of A, B and Company attaches the same property, the first attachment is postponed to the second. In other words, the debt of the second or firm creditor must be fully paid, after which the first or individual creditor would be permitted to have his debt satisfied out of the surplus left

If firm property is transferred in fraud of firm creditors, an attachment will issue against the firm and every member thereof. If, however, one partner applies partnership property to the payment of his individual debts, thereby fraudulently withdrawing the property from firm creditors, without the knowledge or consent of his co-partners, an attachment would not lie against the firm in the absence of any participation in the fraudulent act of the co-partner.

Suppose in an action for deceit, a creditor issues an attachment against the firm, the question arises, "Can he also issue an attachment against the property of an innocent partner?" The courts have decided in the affirmative where the culpable partner was acting within the scope of the partnership business.

Effect of a Novation.

The right of a partnership creditor to bring suit against the partners composing it, and to enforce judgment against their separate properties as well as the property of the firm, cannot be prejudiced by the withdrawal of a partner or an agreement that one or more shall assume all liabilities.

A partner who retires from a firm can only be relieved from liability by an agreement to that effect between himself and the members of the firm and the firm creditors. A creditor may substitute the liability of a new partner or accept new security from the remaining partners for that of the old partnership, provided, of course, such an agreement is supported by a legal consideration.

In view of the fact that many partnerships have dormant or silent partners, it becomes essential to inquire into their liability with reference to firm debts. If, subsequent to obtaining judgment against the ostensible partners, a firm creditor discovers the existence of one or more dormant partners in the firm he may lawfully proceed to judgment and execution against said dormant members. A dormant partner is equally liable with the active partners upon negotiable paper issued in the firm name. Thus, a

bank which has discounted a bill or note in the name of the ostensible partner or partners can recover against the dormant partner, even though it was ignorant of the latter's connection with the firm when it discounted the paper.

Termination of Dormant Partner's Liability.

We observed above that an ostensible partner is required to give notice of his withdrawal from the firm to avoid liability for subsequent obligations incurred by the firm. It is different, however, in the case of a dormant partner, who is not required to give notice of his withdrawal from the firm, for the reason that his connection with the firm being unknown, its credit was not increased by his membership therein. The public would not, therefore, be misled by the omission of the dormant partner to give notice of his withdrawal from the firm.

A dormant partner is one whose connection with the firm is unknown and who takes no active part in the management of its business, both secrecy and inactivity being implied by the word. If a member of a partnership is active in its business, but his connection therewith is unknown, he would be obliged to give notice of his withdrawal to every customer who dealt with the firm while he was a member. Such a silent but active partner would owe no such duty to those who never dealt with the firm during his connection therewith.

Separate Creditor's Remedy.

It has been pointed out that the members of a partnership are jointly and severally liable for all firm debts. In other words a firm creditor may proceed against the partnership property or the property of every individual member thereof at his option. Let us now consider briefly the rights, not of a firm creditor, but of the individual creditor of one of the partners.

What principles are to be applied when a separate creditor attempts to proceed against firm property in order to reach a partner's interest therein? At the beginning of this discussion we noted that a partner's interest in a firm consisted of the right to share in the assets of the firm after payment of all firm creditors and the adjustment of the equities of the partners. In view of this doctrine, a separate creditor of one of the partners might secure a judgment and levy upon the partnership property; nevertheless if firm creditors should subsequently issue executions sufficient to exhaust the firm property, the separate creditor's previous execution would be of no effect.

Although a separate creditor may issue an execution against

the entire firm assets, he acquires no legal interest in said assets. If the firm should become bankrupt or make an assignment for the benefit of creditors subsequent to the separate creditor's levy, title to the firm assets would pass to the assignees. Such assignees could dispose of the partnership effects free from the lien of the separate creditor's levy.

By application to a court of equity, the creditor of an individual partner may obtain a partnership accounting to ascertain the interest which the debtor-partner may have in the firm. The purchaser of a debtor-partner's interest in the firm property under a separate creditor's execution does not become a partner in the debtor's place.

The weight of authority in this country is to the effect that the sale of a debtor-partner's interest in a firm operates as a dissolution of the partnership, and gives the purchaser the right to have a final settlement and adjustment of the partnership affairs.

The Uniform Partnership Act provides, however, that a conveyance by a partner of his interest in the partnership does not of itself dissolve the partnership, nor, as against the other partners in the absence of agreement, entitle the assignee, during the continuance of the partnership, to interfere in the management or administration of the partnership business or affairs, or to require any information or account of partnership transactions, or to inspect the partnership books; but it merely entitles the assignee to receive, in accordance with his contract, the profits to which the assigning partner would otherwise be entitled. In case of a dissolution of the partnership, the assignee is entitled to receive his assignor's interest, and may require an account from the date only of the last account agreed to by all the partners.

The Rights of Creditors in Equity.

We observed in our discussion of contracts that a court of equity had power to administer justice in all cases in which the remedy provided in a court of law was insufficient. In administering the firm estate and the separate estates of the partners composing it, a court of equity proceeds upon different principles from those that control a court of law.

It will be recalled that in law, a firm creditor who obtained a judgment could execute it against firm property or the separate estates of any of the partners. In equity a different doctrine prevails providing that as the separate creditor cannot come in on the partnership estate until all firm creditors are paid, firm creditors cannot participate in the separate estates of the partners

until their individual creditors have been first paid. In the event that there is no partnership estate and no living solvent partner, creditors of the firm are permitted to share equally with the individual creditors in the separate estate of the bankrupt partners. If, instead of the firm becoming bankrupt, one of the partners is adjudged a bankrupt, a somewhat different situation is presented. The United States Bankruptcy Act of 1898 provides in such cases as follows:

"In the event of one or more but not all of the members of a partnership being adjudged bankrupt, the partnership property shall not be administered in bankruptcy unless by consent of the partner or partners not adjudged bankrupt; but such partner or partners not adjudged bankrupt shall settle the partnership business as expeditiously as its nature will permit, and account for the interest of the partner or partners adjudged bankrupt."

Until the present bankruptcy law of the United States was enacted the decisions were at variance as to whether the discharge of a partner in bankruptcy would relieve him from liability for firm debts. The present bankruptcy statute takes from the bankrupt partner his share in the firm assets and permits firm creditors to prove their claims against his estate, and further provides that "a discharge in bankruptcy shall release a bankrupt from all his provable debts, except such as (1) are due as a tax levied by the United States, the state, county, district or municipality in which he resides; (2) are liabilities for obtaining property by false pretenses or false representations, or for wilful and malicious injuries to the person or property of another, or for alimony due or to become due, or for maintenance or support of wife or child, or for seduction of an unmarried female, or for breach of promise of marriage accompanied by seduction, or for criminal conversion; (3) have not been duly scheduled in time for proof and allowance, with the name of the creditor if known to the bankrupt, unless such creditor had notice or actual knowledge of the proceedings in bankruptcy; or (4) were created by his fraud, embezzlement, misappropriation, or defalcation while acting as an officer or in any fiduciary capacity; or (5) are for wages due to workmen, clerks, traveling or city salesmen, or servants, which have been earned within three months before the date of commencement of the proceedings in bankruptcy; or (6) are due for moneys of an employee received or retained by his employer to secure the faithful performance by such employee of the terms of a contract of employment.

It is possible under our present bankruptcy law to adjudge a partnership bankrupt while the partners composing it remain

solvent, the act setting forth that any person guilty of certain acts may be declared bankrupt, and further that the word "person" shall include "partnerships."

In the accounts of a partnership the firm is, of course, a debtor to each partner to the extent of said partner's contribution thereto, and the Federal bankruptcy statute permits proof of the claim of an individual partner against the firm, and *vice versa*.

Neither a solvent partner nor the estate of a bankrupt partner can prove against a co-partner's estate in competition with firm creditors.

Upon the death of a partner, all partnership debts being joint and several, a creditor may proceed for the collection of his debt against the surviving partners or against the estate of the deceased partner. As the surviving partners succeed to all the rights and interests of the partnership, some authorities hold that partnership creditors must first proceed against the assets of the firm, as the primary fund for the payment of firm debts, and deny the right to the creditor to proceed in the first instance against the deceased partner's estate unless the firm assets are first exhausted.

Duties and Liabilities of Partners Between Themselves.

The first and most important obligation imposed upon a partner, and that which lies at the very foundation of the partnership relation, is the duty to exercise fairness and good faith toward his co-partners. It is unnecessary to provide in the partnership articles that this be done, as the duty is imposed by virtue of the relationship as partners.

This doctrine extends to negotiations preliminary to forming a partnership. For example, assume that a partnership is to be formed for the purpose of purchasing certain property with a view of selling the same for a profit. If a party to this agreement secured title to the property before the partnership was organized, a court would compel him to transfer the property to the firm at the same price which he paid for it. As a further illustration, if one partner induces another to enter into partnership with him by false representations with reference to the property which has been contributed to the business, the deceived party may have the partnership contract annulled and recover what he put into the firm. He does not have to establish actual damage, but is released from the partnership relation on the ground that his confidence was betrayed.

The law will not permit a partner to derive any private profit or advantage from any transaction connected with the partner-

ship business. All secret commissions paid to a partner on firm purchases or firm sales are firm property and may be recovered as such.

If one of the partners without the knowledge or consent of his co-partners engages in a business which is in competition with that which the firm was organized to conduct, he may be compelled to account and turn over to the firm such profits as were realized by him from such competing business.

As a result of the complicated nature of modern business relations, it frequently occurs that a member of one firm is also a member of several other firms carrying on distinct lines of business. But in the absence of an agreement that a partner shall devote his entire time and attention to the business of a single partnership, there is no liability on his part for engaging in any other business which is not in competition with that of the firm of which he is a member. Thus the courts have held that a member of a firm of warehousemen would not compete with his partnership in owning and managing wharf boats. This question is sometimes a difficult one as is illustrated in the case of a firm of real estate brokers, where one member purchases and sells real estate as an individual speculation, but it has been held that to do so does not contravene the principle under discussion.

Ordinarily partnership articles provide that the partners composing it shall devote their entire time and attention to the firm business, and consequently a partner has no right to extra compensation for extra time and services devoted to the business.

One partner cannot sue his co-partner at law upon a matter which is properly an item in the partnership account. Action may, however, be brought upon proper cause for a dissolution of the partnership and an accounting. One partner may also sue his co-partner for a tort or personal wrong done him. Thus, for example, a partner may sue a co-partner who wrongfully injures the plaintiff's separate property, although it was at the time in the possession and use of the partnership.

An action could not be maintained at common law between firms having a common member, on the ground that it was necessary for all the partners to join in an action and the common member could not at the same time be both a plaintiff and a defendant. This doctrine no longer prevails, and consequently the fact that a partner in the plaintiff firm is also a member of the defendant firm will not prevent an action being brought by one against the other.

Having considered the manner in which a partnership may be formed, its general nature, the powers possessed by the part-

ners composing it, and the rights and remedies of creditors, our next inquiry will be directed to ascertain how a partnership may be dissolved and an accounting and proper distribution of its assets effected.

It is not necessary that the partners in a firm agree to dissolve or that a judicial decree be made to this effect. The happening of any event which makes it unlawful to carry on the firm business any longer dissolves the partnership by operation of law. For example, if a partnership exists between a citizen of the United States and a citizen of Japan, upon a declaration of war between these two countries, the partnership would be immediately dissolved, as it would be impossible, in view of the allegiance which each partner owes his respective country, to subserve the ends for which the partnership was formed. Likewise in a jurisdiction where a judge is prohibited from practicing law, a partnership of attorneys is dissolved by one of its members qualifying as a judge.

Dissolution.

The dissolution of a partnership is the change in the relation of the partners caused by any partner ceasing to be associated in the carrying on, as distinguished from the winding up, of the business.

On dissolution the partnership is not terminated, but continues until the winding up of partnership affairs is completed.

Dissolution of a partnership is caused without violation of the agreement between the partners, by the termination of the definite term or particular undertaking specified in the agreement, by the express will of any partner when no definite term or particular undertaking is specified, by the express will of all the partners who have not assigned their interest or suffered them to be charged for their separate debts, either before or after the termination of any specified term or particular undertaking, by the expulsion of any partner from the business *bona fide* in accordance with such a power conferred by the agreement between the partners.

In contravention of the agreement between the partners, where the circumstances do not permit a dissolution, by the express will of any partner at any time, by any event which makes it unlawful for the business of the partnership to be carried on, or for the members to carry it on in partnership; by the death of any partner; by the bankruptcy of any partner or the partnership. By decree of court on application by or for a partner wherever a partner has been declared a lunatic in any

judicial proceeding or is shown to be of unsound mind, a partner becomes in any other way incapable of performing his part of the partnership contract, a partner has been guilty of such conduct as tends to affect prejudicially the carrying on of the business, a partner wilfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable to carry on the business in partnership with him, the business of the partnership can only be carried on at a loss, other circumstances render a dissolution equitable. After the termination of the specified term or particular undertaking; at any time if the partnership was a partnership at will when the interest was assigned or when the charging order was issued.

Except so far as may be necessary to wind up partnership affairs, or to complete transactions begun but not then finished, dissolution terminates all authority of any partner to act for the partnership with respect to partners, when the dissolution is not by the act, bankruptcy, or death of a partner; or when the dissolution is by such act, bankruptcy, or death of a partner.

Where the dissolution is caused by the act, death, or bankruptcy of a partner, each partner is liable to his co-partners for his share of any liability created by any partner acting for the partnership as if the partnership had not been dissolved, unless the dissolution being by act of any partner, the partner acting for the partnership had knowledge of the dissolution, or the dissolution being by the death or bankruptcy of a partner, the partner acting for the partnership had knowledge or notice of the death or bankruptcy.

If the partnership is not dissolved because it has become unlawful to carry on the business, a partner cannot, after dissolution, bind the partnership to third persons by any act which is not necessary to wind up the partnership affairs or to complete transactions then unfinished, unless such third person, having had relations with the partnership by which a credit was extended upon the faith of the partnership, has had no knowledge or notice of the dissolution; or such third person, not having had business relations with the partnership by which a credit was extended to the partnership, has no knowledge or notice of the dissolution, and the fact of dissolution has not been advertised in a newspaper of general circulation of the place (or of each place, if more than one) at which the partnership business was regularly carried on, and in the legal periodical, if any, designated by

rule of court in such place or places for the publication of legal notices.

The partnership is in no case bound by the acts of a partner who has become bankrupt, but this provision does not affect the liability of any person who, after bankruptcy, has represented himself, or consented to another's representing him to be a partner of the bankrupt.

The dissolution of the partnership does not of itself discharge the existing liability of any partner. A partner is discharged from any existing liability upon dissolution of the partnership by an agreement to that effect between himself, the partnership creditor, and the person or partnership continuing the business; and such agreement may be inferred from the course of dealing between the creditor having knowledge of the dissolution and the person or partnership continuing the business.

Where a person agrees to assume the existing obligations of a dissolved partnership, the partners whose obligations have been assumed shall be discharged from any liability to any creditor of the partnership who, knowing of the agreement, consents to a material alteration in the nature or time of payment of such obligations.

The individual property of a deceased partner shall be liable for all obligations of the partnership incurred while he was a partner, but subject to the prior payment of his separate debts.

Accounting and Distribution.

We have now seen the various ways by which a partnership may be dissolved. What, we next ask, are the rights and obligations imposed by virtue of the dissolution of a partnership upon the members composing it?

When a partnership is dissolved in any of the ways heretofore mentioned the first object sought to be accomplished by a partner is to obtain an accurate accounting as to all dealings and transactions connected with the firm's business. Equity always favors the exercise of his right to an accounting by a partner, in order that the surplus assets may be properly distributed, or if the account proves the firm to be insolvent, or a partner a debtor thereto, proper contribution may be exacted.

Method of Distribution.

In settling accounts between the partners after dissolution, the following rules are applicable, subject to any agreement to the contrary:

(*a*) The assets of the partnership are:

I. The partnership property;

II. The contributions of the partners necessary for the payment of all the liabilities specified in clause (*b*);

III. Those owing to partners in respect of capital;

(*b*) The liabilities of the partnership shall rank, in order of payment, as follows:

I. Those owing to creditors other than partners;

II. Those owing to partners other than for capital and profits;

III. Those owing to partners in respect of profits.

(*c*) The assets shall be applied, in order of their declaration in clause (*a*) of this paragraph, to the satisfaction of the liabilities.

(*d*) The partners shall contribute the amount necessary to satisfy the liabilities; but if any, but not all, of the partners are insolvent, or, not being subject to process, refuse to contribute, the other partners shall contribute their share of the liabilities, and, in the relative proportions in which they share the profits, the additional amount necessary to pay the liabilities.

(*e*) An assignee for the benefit of creditors, or any person appointed by the court, shall have the right to enforce the contributions specified in clause (*d*).

(*f*) Any partner or his legal representative shall have the right to enforce the contributions specified in clause (*d*), to the extent of the amount which he has paid in excess of his share of the liability.

(*g*) The individual property of a deceased partner shall be liable for the contributions specified in clause (*d*).

(*h*) When partnership property and the individual properties of the partners are in the possession of a court for distribution, partnership creditors shall have priority on partnership property, and separate creditors on individual property, saving the rights of lien or secured creditors as heretofore.

(*i*) Where a partner has become bankrupt or his estate is insolvent the claims against his separate property shall rank in the following order:

I. Those owing to separate creditors;

II. Those owing to partnership creditors;

III. Those owing to partners by way of contribution.

It will thus be observed that the parties may, by special agreement, change the method of distribution, but in the absence of

any such agreement the courts will distribute the partnership assets in accordance with the rules above stated.

If a partner has failed to contribute his share of the capital, or has made overdrafts on the firm, he cannot compel his co-partner to pay out of his individual estate firm debts, until he has first repaid his overdrafts and paid in his share of the capital. If the fund then available for payment of firm debts is insufficient, the partners must bear the losses in the proportion in which they are entitled to share the profits.

Repayment of Advances.

We have referred above to advances which one partner may from time to time make to the partnership business. A partner making such advancements is entitled to be reimbursed by his co-partners, and such reimbursements are required to be made before the partners will be repaid the amount contributed by them as capital.

Property contributed by the partners vests in the firm, and consequently, if upon final settlement of the partnership affairs, the assets of the firm are insufficient to satisfy this indebtedness, the partners must bear the loss in the same proportion as other debts of the partnership are borne by them. If the entire capital is contributed by one partner, and the firm assets are insufficient to pay the same, the partner paying in the capital is entitled to contribution from his co-partners, and is a creditor of the firm to the amount of capital contributed by him thereto.

In case one or more of the partners becomes insolvent, the solvent partners must bear the losses in capital, the same as other partnership losses. If certain of the partners are non-resident, and cannot be reached by writ from the court within whose jurisdiction the partnership business is located, the resident solvent partners must bear the losses in proper proportion.

Interest on Capital.

Ordinarily interest cannot be recovered on capital contributed by the partners, but when the contributions of capital are unequal the articles of co-partnership often provide that the same shall bear interest at a specified rate. In the absence of such a provision, interest on capital will not be allowed except from the date repayment should be made.

Adjustment of Equities Between Partners.

It has been pointed out that the individual creditors of a partner have only a right to his individual interest therein, which,

as we have repeatedly stated, is his "share of what may remain after payment of the partnership debts and after a settlement of the accounts between the partners." It therefore follows that if one partner is more indebted to the firm than his co-partner, his share will be encumbered by a lien to make good such deficit to his co-partner.

Interest Payable by a Partner.

If the account shows that one partner has appropriated firm assets to his own use, or has neglected to account to his co-partners for firm property put in his hands for the purpose of winding up the firm affairs, he will be liable to pay interest as part damages for wrongfully detaining money due his co-partners.

Cost of an Accounting.

As it is necessary in winding up the affairs of a partnership to have an accounting, the costs of such are payable out of partnership assets. If there are no funds with which to meet this expense, the partners will have to bear the same equally.

Partnership Good-Will.

After a firm has been established in business for a considerable time it frequently acquires a reputation for its integrity, the quality of its wares or products, etc. This reputation constitutes what is known as the "good-will" of the business. The good-will of a business is property transferable like any other species of property, and may be realized upon as an asset of the firm.

It is seldom that the good-will of a firm is valued at the annual or semi-annual stock taking and entered upon the books as its most valuable asset. Upon dissolving a partnership each partner has the right to compel the sale of the good-will of the business and have its value in the account.

The purchaser of the good-will of a partnership should protect himself against the possibility of the surviving partner or partners engaging in the same business after winding up the affairs of the old partnership. Such a contingency would, of course, impair the value of the good-will purchased.

If no provision has been made to the contrary the purchaser of the partnership property becomes the owner of the good-will, and has the sole right to hold himself out as the successor to the business of the old firm, but, although the purchaser of a partnership has the right to hold himself out as the successor of the old firm, he must be careful not to use his predecessor's name in such a way as to expose any member of the former firm to any liability.

Appointment of Receiver.

If for any of the reasons we have learned it becomes necessary to dissolve a partnership, a receiver may be appointed to carry on the business until such time as it may be sold to best advantage. A receiver will be appointed in such cases where to wind up the business of the partnership immediately would entail loss. Pending the winding up of the partnership business by the receiver every partner will be restrained from carrying on the same business. A partner may, however, engage in a similar business if he conducts it as his own and in a manner indicating that it is not the business of the old firm.

At common law a partner was not allowed to limit his liability for firm debts to his contribution to firm capital, each member of a partnership being liable for the entire partnership indebtedness. A stipulation in the partnership agreement that one partner should not be liable for firm losses beyond his contribution of capital thereto, although binding between the partners, would be no protection against the claim of any firm creditor.

Limited Partnerships.

The right to create limited partnerships, in which the liability of one or more of the partners, is limited to his contribution of capital, is the result of legislative enactment, and every limited partnership must be formed in strict compliance with the statute.

Although the statutes in the various states, regulating the formation of limited partnerships differ somewhat, the distinctive characteristic of a limited partnership is the fact that there must be at least one managing partner who is liable as a general partner for all partnership debts, together with one or more contributing partners who take no active part in the management of the business, who are only liable for firm debts to the extent of their contribution to its capital, and are known as special partners.

Limited partnerships are regulated by statutes in the various states which generally provide that those composing the firm are required to execute a certificate setting forth the name under which the partnership is to be conducted, the general nature of its business, the names and addresses of all the general and special partners, distinguishing which are general and which are special, the amount of capital which each special partner contributes, and the period of time during which the partnership shall exist. Said certificate must be acknowledged by those signing the same and also recorded in the office of the recorder of deeds for the county in which the principal place of business of the partnership shall be located. An affidavit by one of the general partners must

be made and filed setting forth that the amounts specified in the certificate have been paid in cash by the special partners. Furthermore, the general terms of such a partnership agreement must be published in two newspapers once a week for six weeks after recording the certificate.

With the exception that the statutes generally restrict the control of a special partner over the firm business and limit his liability for firm debts, a limited partnership is a true partnership and is regulated by the common law with reference to the rights, duties and liabilities of the partners. By very recent statute in Pennsylvania, a special partner may do business for the partnership and maintain a limited liability for its debts.

The object in view in authorizing limited partnerships is to stimulate and encourage trade. If the parties fail to comply strictly with the requirement of the statute, the special partners become general partners and are liable as such for all firm debts to the extent of their individual fortunes.

A limited partnership may be renewed beyond the time originally fixed for its duration, in the same manner as is required for its original formation, and every such partnership which shall be otherwise renewed or continued shall be deemed a general partnership.

It must be borne in mind, however, that a limited partnership is not an illegal association on account of failure to comply with the statutory requirements. Non-compliance with the statute does not render void contracts made with the firm or release a firm debtor from any obligation he may owe the firm. If business is conducted by a limited partnership before its certificate is filed and recorded a special partner is not rendered liable as a general partner for firm engagements entered into after a subsequent compliance with the requirements of the statutes.

Special Partners.

Assuming that a limited partnership has been duly organized in accordance with the statutes, it may be transformed into a general partnership, as regards creditors, without any new agreement between its members. Any interference by a special partner in the business affairs of the partnership beyond the powers conferred on him by statute will render such special partner liable as a general partner. A special partner usually has the right to examine the books of the partnership and advise as to its management, but any assumption of the powers of a general partner will forfeit his statutory exemption from personal liability.

Again, it is of the greatest importance to the general patrons of a limited partnership that the facts set forth in its registered

certificate should not be changed. Hence any alteration in the names of the general partners, the nature of the business or the capital of the firm will operate to transform a limited partnership into a general one, with all the incidents thereof.

The weight of authority is to the effect that it is unnecessary for a special partner to join in a general assignment for the benefit of creditors.

The fact that a special partner has contributed to the firm capital does not entitle him to share with outside creditors in the firm estate. Such special partner has no greater rights against the firm estate than any other partner.

A limited partnership may be dissolved in any of the ways in which a general partnership may be dissolved, death or bankruptcy of a partner or by expiration of the period for which it was organized, as set forth in its certificate.

The statutes regulating limited partnership frequently extend the right to the members thereof to terminate the partnership prior to the date mentioned in the certificate, if they so desire. To accomplish this purpose, notice of the dissolution must be given by publication. The dissolution does not take effect, however, until the statutory publication has been completed.

Partnership Associations or Joint-Stock Companies.

The statutes of many states throughout the country authorize the formation of a second kind of limited partnership, in which responsibility for the debts of the association are limited to the capital subscribed. None of the partners in such an association is subject to any personal liability. All business is conducted through a board of directors or managers, the association holds real estate, sues and is sued in its own name, rather than in the names of the partners composing it. Such an association may, moreover, adopt a common seal. In many respects a partnership association closely resembles a corporation, but the courts prefer to treat them as partnership. In view of the fact that a partnership association usually consists of a large number of members, it is given many of the powers incident to a corporation, but it is nevertheless a partnership, as is illustrated by the fact that no one can purchase the interest of a member and participate in the business of the association without the vote of a majority of the members in number and value of interest. Furthermore, no charter is granted to the members of a joint-stock company or partnership association.

The law in Pennsylvania regulating joint-stock companies provides substantially as follows:

That whenever three or more persons desire to organize a partnership association for the purpose of carrying on any lawful business or occupation by subscribing and contributing capital, which capital shall alone be liable for the debts of such association, they may do so by executing a statement setting forth the names and the amount of capital subscribed by each member, the total amount of capital and when and how the same is to be paid in, the character of the business intended to be carried on and its location, the name of the association, which must conclude with the word "Limited;" the duration of said company and the names of the officers selected to conduct the business. Such a statement, together with any amendments thereto, must be recorded.

The name of such an association, with the word "Limited" added, shall be affixed outside of the office or place in which the business of the association is carried on and its full name must be used on all contracts and official publications of said association. The omission of the word "Limited" in the use of the name of the partnership association shall render the members thereof individually liable for any indebtedness, damage or liability arising thereform.

Such an association shall hold at least one meeting of its members every year, at which there shall be elected not less than three or more than five managers, one of whom shall be chairman (president), one the treasurer and one the secretary, or the office of secretary and treasurer may be combined in one person.

No liability greater than $500 shall bind the association unless reduced to writing and signed by at least two of the managers of the association.

The association may, at such times and in such amounts as a majority of its managers may determine, divide the profits of its business, but the profits so divided shall not diminish the capital of the association. The laws of other states differ in minor details only.

Dissolution of Joint-Stock Companies.

A partnership association may be dissolved whenever the period fixed for its duration expires or whenever by a vote of a majority of its members in number and value of interest, it shall be so determined. Notice of such dissolution is required to be published six consecutive times in two newspapers of the proper county, and immediately upon the commencement of said publication of dissolution said association shall cease to do business, except such as is necessary to beneficially conclude its affairs.

Upon the voluntary dissolution of such a partnership association its property shall be distributed as follows:

1. In paying all wages for labor.
2. In satisfying its other indebtedness.
3. After liquidating its debts the assets remaining shall be distributed among its members in proportion to their respective interests.

Three liquidating trustees, not more than two of whom shall have been a manager of the dissolved association, shall be elected by the members of the association, and shall have full power to settle the affairs of the association and to distribute its assets after payment of its debts among the members thereof.

The last form of business association which we will consider is that of corporations, the law regulating the organization and management of which will constitute the subject of our next inquiry.

AGREEMENT BETWEEN PARTNERS, OR ARTICLES OF CO-PARTNERSHIP

ARTICLES OF AGREEMENT *made and concluded, the day of , in the year of our Lord one thousand nine hundred and , between , of , of the one part, and , of , of the other part.*

THE SAID PARTIES *have agreed, and by these presents do agree, to associate themselves in the art and trade of buying, selling, vending and retailing all sorts of wares, goods, and commodities belonging to the trade or business of merchandise; which said co-partnership shall continue from the date of these presents for, during, and to the full end and term of years next ensuing.*

AND *to that end and purpose, he, the said , hath, the day of the date of these presents, delivered in, as stock, the sum of dollars; and the said has likewise so delivered the sum of dollars, both of said sums to be used, laid out, and employed in common between the parties to this agreement, for the management of the said business to their general advantage.*

AND *it is hereby agreed between the said parties, each for himself respectively and for his own particular part, in manner following, that is to say:*

THAT *they shall not and will not, at any time hereafter, exercise or follow the said trade or any other, during the said term, to their private benefit and advantage, but shall and will, from time to time, and at all times during the said term (if they shall so long live), do their best endeavors, to the utmost of their skill and ability, for their mutual advantage, with the stock aforesaid, and the increase thereof.*

AND *also that they shall and will, during the said term, discharge equally between them the rent of the premises which they shall rent or hire for the managing of the trade or business aforesaid.*

AND *that all such profit, gain, and increase as shall arise by reason of the said joint business shall be equally and proportionably divided between them, share and share alike. And also all losses that shall happen in the said business, by bad debts, bad commodities, or otherwise, shall be paid and borne equally between them.*

AND FURTHER, *it is agreed between them, that there shall be kept during the said term and joint business, perfect, just and true books of accounts, wherein each of the said co-partners shall enter and set down, as well as the money by him received and expended in and about the said business, as also all commodities and merchandise by them bought and sold by reason and on account of the said co-partnership, and all other matters and things in any wise belonging or appertaining thereto, so that either of them may at any time have free access thereto.*

AND *also that the said co-partners, once in twelve months, or oftener if need shall require, upon the request of any one of them, shall make and render each to the other, or to the executors and administrators of each other, a true and perfect account of all the profits and increases by them made and of all losses sustained; and also of all payments, receipts, disbursements, and all other things whatsoever by them made, received and disbursed, acted, done, and suffered in the said co-partnership; and, the account so made, shall and will clear, adjust, pay and deliver, each unto the other, at the time of making such account, their equal shares of the profit so made as aforesaid.*

AND *at the end of the said term of years or other sooner determination of these presents (be it by the death of one of the said parties or otherwise), they, the said co-partners, each to the other, or, in case of the death of either of them, the surviving party to the executors or administrators of the party deceased, shall and will make a true and final account of all things as aforesaid, and in all things well and truly adjust the same; and also, that upon making such account, all and every the stock, as well as the gain and increase thereof, which shall appear to be remaining, shall be equally parted and divided between them, the said co-partners, their executors or administrators, share and share alike.*

IN WITNESS WHEREOF, *the said parties to these presents have hereunto set their hands and seals, the day and year first above written.*

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF US: } [L.S.] [L.S.]

AGREEMENT FOR RELINQUISHMENT BY ONE PARTNER OF HIS INTEREST IN THE CO-PARTNERSHIP TO THE OTHER PARTNERS

THIS INDENTURE, *made between J. M., of the City of , of the one part, and J. W. and L. W., of the same city, of the other part, witnesseth: That whereas the said J. M., J. W., and L. W. have heretofore dealt together as co-partners, and by their joint trading, many goods, wares, and debts are due unto them, wherein every of them hath an interest, and likewise the said parties are become indebted to divers other persons concerning the said joint trading: Now the said J. M., in consideration of the sum of paid by the said J. W. and L. W., the receipt whereof the said J. M. doth hereby acknowledge, doth consent to sever himself from the said joint trading and co-partnership with the said J. W. and L. W., and doth hereby grant, assign, and transfer unto the said J. W. and L. W. all the right, property, and interest whatsoever, which he, the said J. M., hath or should have, in and to all and singular, the goods, wares, merchandise, and debts, mentioned in and by the balance of an account hereto annexed.*

AND THE SAID *J. M., for himself, doth covenant with the said J. W. and L. W., that the said account is just and true, and that the said J. M. hath not received or discharged, and that he shall not receive or discharge, any of the goods or debts mentioned in the said account, or do any act to hinder the said J. W. and L. W. from receiving the same; but will permit the said J. W. and L. W. to recover and receive the same to their own use, without any account to be rendered therefor to the said J. M. and that the said J. M., upon request, will do any reasonable act which may be necessary or convenient to assist the said J. W. and L. W. to recover and receive the same.*

AND THE SAID *J. W. and L. W., for themselves, do covenant that they will, at all times hereafter, pay and satisfy all the creditors to whom the said J. M. standeth chargeable or indebted, for and concerning all the affairs and dealings of the said firm mentioned, and will at all times hereafter indemnify and save harmless the said J. M., his heirs, executors and administrators, from all the debts and liabilities, and every of them, of the said firm.*

IN WITNESS WHEREOF, *we have hereunto set our hands and seals this day of , A. D. one thousand nine hundred and*

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

DISSOLUTION OF PARTNERSHIP

WHEREAS, *by agreement made the day of , A. D. 19 , John Jones and William Burns, of the City of , did enter into co-partnership, for the purpose of carrying on the business of merchandising, for the term of years.*

AND WHEREAS, *the said John Jones wishing to discontinue and decline the joint partnership entered into as aforesaid, he, the said John Jones, hath proposed to his said partner, William Burns, a dissolution, to which proposition the said William Burns hath assented.*

THE PARTIES THEREFORE *mutually consent and agree, by these presents, that the said partnership heretofore existing between them be this day dissolved, and it is accordingly dissolved.*

AND *it is further stipulated and agreed mutually between them, that William Burns do take the entire stock of goods and merchandise now on hand, belonging to the partnership, at a valuation to be set upon the same by three competent persons mutually appointed to value the same; and that he also have power to collect the debts now due to the partnership, and to recover all and any part of the same, in the name of the firm, by suits at law or otherwise. And that finally the said William Burns do pay over to the said John Jones, or his legal representatives, the full share and profits which shall appear to be due to the said John Jones, in months after the date hereof.*

WITNESS *our hands and seals, this day of A. D. 19 .*

SEALED AND DELIVERED IN PRESENCE OF: }

(*Immediately after a dissolution of co-partnership, a notice should be published in the public papers to that effect, for the information of the public at large, and a special notice should be sent to every person who has had dealings with the company. If these precautions are omitted, each of the partners will still be liable as before the dissolution, for the acts of the others, to all persons not having had notice of said dissolution.*)

PUBLIC NOTICE OF A DISSOLUTION OF PARTNERSHIP

NOTICE IS HEREBY GIVEN, *that the partnership, lately subsisting between A. B. and C. D., of , under the firm of B. & D., expired on the day of (or was dissolved, on the day of , by mutual consent, or according to circumstances). All debts owing to the said partnership are to be received by said A. B., and all demands on the said partnership are to be presented to him for payment (or, A. B. is authorized to settle all debts due to and by the company.)*

A. B.
C. D.

PUBLIC NOTICE OF A DISSOLUTION OF PARTNERSHIP BY RETIREMENT OF ONE PARTNER, AND CONTINUANCE OF BUSINESS BY REMAINING PARTNERS

NOTICE IS HEREBY GIVEN, *that the partnership between A. B., C. D., and E. F. was dissolved on the day of so far as relates to the said E. F. All debts due to the said partnership are to be paid, and those due from the same discharged, at , where the business will be continued by the said A. B. and C. D., under the firm of B. & D. (or varied to suit circumstances).*

A. B.
C. D.
E. F.

CORPORATIONS

Definition—Classification—Formation—Liability of Stockholders—Transfer of Shares—Rights and Remedies of Stockholders—Dividends—Their Management—Dissolution.

FROM our study of partnerships, general, limited and joint-stock companies, it is obvious that there are certain disadvantages attending these forms of business associations which it is desirable to overcome. To meet the objects sought to be accomplished the law governing corporations has been developed so that today corporations constitute by far the most general and important form of business association known to the commercial world.

A corporation differs from a co-partnership in two important particulars. In the first place we have learned that a partnership is not regarded as a collective body, but as an association of individuals; in other words, a partnership cannot be considered distinct from the members composing it. A corporation on the other hand, has a distinct personality of its own and exists separate and distinct from the members who compose it. This distinction is further illustrated upon the death of a member of one of these associations; in the case of a partnership the death of a member operates as a dissolution of the partnership, but in the case of a corporation the death of a member thereof has no effect whatsoever upon its *status*.

In the second place, every partner is personally liable for all debts contracted by the partnership, whereas one who purchases stock in a corporation, thereby becoming a member thereof, has no greater liability than is represented by the stock which he holds.

Likewise membership in a business corporation passes by the sale or purchase of stock, the consent of other stockholders being unnecessary.

A further distinction between a partnership and a corporation resides in the fact that in the former each member is an agent for the others and may bind them by acts within the scope of the partnership business; in the latter, however, the business is managed by particular agents selected by vote of the shareholders or members, and who alone have power to bind the company as agents.

Definition of a Corporation.

Having pointed out the principal distinctions between a partnership and a corporation, we are better able to intelligently consider a definition of a corporation. Innumerable definitions have been given of a corporation, the most comprehensive of which is as follows:

"A corporation is a collection of many individuals united in one body, under a special denomination, having perpetual succession under an artificial form, and vested by the policy of the law with the capacity of acting in several respects as an individual, particularly of taking and granting property, of contracting obligations and of suing and being sued, of enjoying privileges and immunities in common and of exercising a variety of political rights, more or less extensive, according to the design of its institutions, or the powers conferred upon it, either at the time of its creation or any subsequent period of its existence."

The well-known definition given by Chief Justice Marshall, to wit, "A corporation is an artificial being, invisible, intangible and existing only in contemplation of law," although easier to be remembered, does not give the clear conception of a corporation as the definition above quoted.

From the above definition it will be observed that when the law creates a corporation it calls into legal existence an artificial person, a legal entity with rights separate and apart from the natural persons who compose the same. Being an artificial person, it has no power to act until such power has been conferred upon it by the sovereignty creating it.

Various Kinds of Corporations.

Corporations are divided into corporations aggregate, corporations sole, public corporations and private corporations, the latter class being again subdivided into ecclesiastical or religious corporations, and eleemosynary or charitable corporations.

Corporations aggregate are those composed of two or more persons. Corporations sole are those composed of a single person, as, for example, a minister who holds parsonage lands to himself and his successors, in right of the parish, or the Governor of the state, or any other public officer who is invested with any of the attributes of a corporation by reason of his official position.

Public corporations are governmental institutions, created by law for the administration of the public affairs of a community, such as counties and municipalities. Whether a corporation is to be regarded as a public one or not depends upon the object for which it was created rather than the interests controlling it. The

fact that all the shares in a corporation are held by the state does not render it a public corporation. Thus it has been decided that a state may hold the entire stock of a state bank, but such a bank is not, on this account, a public corporation.

Private corporations are associations formed by the voluntary agreement of the members composing it, as, for example, banking, railroad and manufacturing companies.

Religious corporations are such as are organized for the purpose of advancing the cause of religion or administering church property for religious purposes. The incorporated churches existing throughout the United States are corporations of this class.

Charitable corporations are those organized for the purpose of carrying out charitable trusts, the distinguishing feature of this class of corporation being that they are not formed for the profit of the incorporators thereof. Illustrations of this class are corporations formed for the management of free hospitals and asylums for the poor, insane, blind or incurable; also colleges and universities of learning promoted by private donations.

A further division of corporations not usually mentioned in the authorities is that of domestic and foreign corporations.

A corporation is considered as domestic to the state under the laws of which it was created.

A foreign corporation is one doing business in a state in which it was not incorporated. For example, the Pennsylvania Railroad Company is a domestic corporation of the State of Pennsylvania, whereas, it is regarded by the State of New York as a foreign corporation. A corporation is a citizen of the state granting its charter, regardless of the fact that by subsequent transfer of stock, all the shareholders may be citizens of another state or states.

A domestic corporation may transact business within the limits of the state which created it. It may, of course, transact business universally, but its powers are generally restricted by other states. To illustrate, a foreign corporation cannot lawfully transact business in Pennsylvania until it has first filed in the office of the Secretary of the Commonwealth a certificate setting forth the location of its established office in this state, the name of the agent appointed to represent it here, the proper name of the corporation, the state wherein it was incorporated and the general nature of its business.

A foreign corporation has no standing in our courts unless it has first filed the above-mentioned certificate. The act does not, however, prohibit a foreign corporation from selling and

delivering goods to a customer in Pennsylvania and suing in our courts for their value. But a foreign corporation cannot make sales in Pennsylvania by shipping goods on consignment, or through traveling agents who do not confine themselves to taking orders, but make actual sales.

A foreign corporation cannot hold real estate in Pennsylvania, but may hold stock in a Pennsylvania corporation owning real estate in Pennsylvania. By different statutes, various kinds of foreign corporations are given the right to hold real estate in this state for specified purposes

Formations of Corporations.

Unlike a partnership, a corporation cannot be formed simply by a contract to this effect by the individuals who are to compose the same. The right to the special privileges enjoyed by a corporation can only be granted by a sovereign power, either a state or national legislature. Hence there are two parties to the formation of a corporation: (1) the state, and (2) the incorporators, who are the individuals composing the corporation. The creation of a corporation being the result of a contract, is governed by the general rules of offer and acceptance. The charter is regarded as an offer by the state to certain individuals (the original subscribers or incorporators) and to constitute a valid contract must be accepted.

The usual manner of accepting a charter is by a majority vote of the incorporators at a meeting expressly convened for the purpose. But it has been held that acceptance of the charter may also be inferred from the conduct of the incorporators. Thus if after a formal application for a charter and after the same has been granted, the incorporators should exercise the corporate powers conferred upon them by the charter, an acceptance of the charter will be presumed by such conduct. As a general rule any person who is competent to enter into a valid contract may become an incorporator.

The power of a state legislature to grant corporate franchises has certain constitutional limitations, the Constitution of Pennsylvania and most other states providing that no charter of incorporation shall be granted by special act, and that corporations shall be formed only in accordance with general laws.

Corporations are divided into two classes: first, those which are not for profit, and second, those which are for profit.

Principal among those included in the first class are corporations for the support of public worship, any benevolent, charitable, educational, or missionary undertaking; literary, medical

or scientific undertaking; library association, or for the promotion of music, painting or other finer arts; corporations formed for the encouragement of agriculture and horticulture; for the maintenance of a club for social enjoyments, or of a public or private cemetery, for the maintenance of a society for beneficial or protective purposes to its members from funds collected therein; corporations formed for the support of fire engine companies and for the protection of trade and commerce; and for the formation and maintenance of military organizations.

Principal among those corporations included in the second class are those for the insurance of human beings against death, sickness or personal injury; for the construction and maintenance of any specie of street, road or highway; the establishment and maintenance of telegraph lines, ferries, hotels, market houses, building and loan associations; associations for the purchase and sale of real estate, and for the carrying on of any mechanical, mining, quarrying or manufacturing business, etc. As the objects for which these two classes of corporation are formed differ materially, their formation is regulated differently.

The incorporation laws of each state differ in many details, and as same are under constant change, it is deemed inexpedient to include an abstract thereof in this book. As to the number of incorporators, costs, resident directors, taxation, etc., the reader is referred to the statutes of his home state.

The Contract of Membership.

The ordinary commercial corporation consists of several members who have agreed between themselves to organize a corporate association. The members of such a corporation are called shareholders or stockholders. The contract between them is set forth in their charter or in the articles of association agreed to in pursuance of a general incorporation law.

A person may become a member of a corporation either by a contract between the original incorporators thereof, or by substitution in the place of an existing member through a transfer of shares.

Although the contract by which the subscribers to the certificate of incorporation become members of the corporation is not effective until all the conditions required by the statute have been complied with, nevertheless the subscribers are bound by their subscriptions from the time they are made. As the statutory subscription is required merely for the purpose of bringing the corporation into existence, after the corporation has been organized, further subscriptions to stock, whereby new members

are admitted into the association, is a matter to be regulated by the corporation itself. Hence a subscription for shares after a corporation has been organized does not render the subscriber a shareholder until it has been accepted by the company through its proper agents.

The subscribers to a charter for a corporation are liable to pay the full value of the shares subscribed by them. The contract of a subscriber is an executory contract and is like the liability of a partner to contribute his share of capital as provided by the partnership articles. Where the stock subscriptions are made before incorporation, upon obtaining a charter the subscribers assume the status of shareholders. The issuing of a certificate of shares is never essential to constitute a subscriber or a transferee of shares a stockholder; it is merely evidence of his right, and may be demanded by the stockholder by virtue of his right of membership.

An important distinction arises between an agreement to purchase shares in a corporation and a subscription therefor, depending upon the intention of the parties. If payment of the price for the shares and delivery of the certificate therefor are by the agreement clearly intended to be concurrent acts the transaction will be a purchase and sale of the shares. As the purchaser does not, therefore, become a shareholder until he has received his stock certificate, a breach of his agreement to purchase before receiving the certificate would only render him liable to the extent of damages actually suffered by the corporation on account of said breach.

On the other hand, an ordinary subscription to stock contemplates that the subscriber shall become invested with all the rights and liabilities of a shareholder before the whole amount of the shares subscribed by him have been paid in. A subscriber to stock in a corporation becomes entitled to vote at the meetings and share in the dividends earned by the corporation, but is liable to contribute the amount of the shares subscribed when called upon or assessed by the board of directors.

Additional Subscriptions.

A subscription for shares of stock in a corporation may be made conditionally, in which event the subscriber does not become a shareholder in the company until the conditions specified have been performed. Such a subscription is in reality only an offer to become a shareholder upon fulfilment of certain conditions. The performance of the stipulated conditions is an acceptance of the offer, and the subscriber thereupon becomes a shareholder,

with incident rights and liabilities. For example, it is quite usual for a man to subscribe before a certain time. Unless the amount specified was subscribed within the time limited the subscriber would not be bound by his subscription. Similarly a subscription for shares in a railroad company by the owner of a farm upon condition that a station be located at a certain corner thereof would not be binding upon the subscriber if the railroad built the station at a point two miles distant from subscriber's farm. Some authorities, however, take a view that it is a fraud toward the other stockholders to permit one to subscribe to stock with any secret condition attached to the subscription. Others seeing the name of the subscriber upon the books of the company might themselves be induced to subscribe by virtue of the additional security thus offered. But the weight of authority is to the effect that it is unfair to force a man to subscribe to stock when, for example, the promise to build a station on his land has been broken, which was his only reason for subscribing. Such conditions as are attached to a stock subscription must not, however, be of such a nature as clearly indicates an intention to deceive the public.

A conditional subscription must not be confounded with a subscription upon special terms. These distinctions may appear to be rather hair-splitting, but they are, nevertheless, as important as they are easily understood. As we observed above, a subscriber upon condition does not become liable on his subscription until the required condition has been performed. A subscription upon special terms is, for example, one providing that the subscriber may pay his subscription at a particular time, or instead of paying the same in money, may do so by contributing machinery or other property. Such a subscription is an absolute one, but the rights and liabilities of the subscriber are governed by the special terms stipulated. Ordinarily a subscription upon special terms cannot be made before a company has received its charter, but after a corporation has been organized such a subscription is regarded as an offer which becomes binding upon acceptance by the proper officers of the corporation.

Subscriptions Obtained by Fraud.

It is a well-established rule of law, as we learned in our study of contracts, that if a person is induced to enter into a contract by false representations or fraudulent statements made by the other contracting party or his agent, the contract may be avoided, at the option of the innocent party. This principle applies with full force to contracts of membership in a corporation; and consequently, if a subscription for shares has been obtained through

fraudulent representations the subscriber may repudiate his subscription and withdraw as a member of the corporation. A false statement regarding the contents of the charter would not, however, entitle a subscriber deceived thereby to avoid payment of his subscription, because a man in subscribing for shares undertakes to become a member of a particular corporation, and as his contract of membership is contained in the company's charter (which is of public record) he is bound at his own peril to inform himself of its contents. Furthermore, such false statements as will give a subscriber the right to repudiate his subscription must not relate to a matter of public law, must not be an expression of opinion, but a positive statement of fact, which must have been made by an agent authorized to speak on behalf of the corporation; they must have constituted a material inducement to the subscription, and the party deceived by such false statements must act promptly in annulling his subscription, otherwise his privilege is lost.

Rescission of Contract of Membership.

Unlike a partnership, a corporation cannot release any of its members from liability by consenting to a cancellation of the shares of a subscriber. The directors of a corporation are trustees for all the stockholders and it is an abuse of their trust to single out some of the stock subscribers and release them from liability.

It may be laid down as a uniform rule of law that a shareholder in a corporation can escape from the obligation of his contract only by one of the following methods: (1) By a transfer of his shares and an acceptance of the transfer by the corporation; (2) by a forfeiture and sale under authority given the company by its charter; (3) by dissolution of the company; (4) by act of the majority in winding up the business of the company and the surrender of its charter; (5) by an act of the shareholders, where permission to withdraw is expressly conferred by the charter, and (6) by unanimous consent of the members of the company under legislative authority.

Many charters contain a provision that the shares of a stockholder may be declared forfeited and sold for non-payment of assessments. The assessments must be authorized by the proper agents of the corporation and if the amount due is tendered to the proper agent of the corporation at any time before a sale for non-payment has actually taken place, a sale made thereafter will be void.

Where a power has been given to declare a forfeiture of

shares for non-payment of calls upon a member, the corporation may either exercise this power or sue for the unpaid calls in an action at law. If a corporation decides to rescind a stockholder's contract of membership by a forfeiture and sale of his shares therein on account of non-payments of calls made for the unpaid portion thereof, it may do so in one of two ways: (1) The shares must either be sold as paid up only to the amount actually paid on them and subject to further calls to the full value of the shares, and the proceeds, less expenses, turned over to the former holder, or (2) the shares must be sold as full paid and after deducting from the price received the amount of calls which the former holder refused to pay, the balance is refunded to him. It should, of course, be borne in mind that if the by-laws provide a penalty for non-payment of assessments, the proceeds derived from a sale of shares could be retained by the corporation as such a penalty.

Liability of Stockholders.

Whether one is an original subscriber of stock or becomes such after a corporation has been formed, he is liable to contribute to the corporation the full amount of the shares he subscribed.

It sometimes occurs that the promoters of a corporation having difficulty in raising sufficient capital to properly conduct business, offer to sell stock at a percentage of its face value, say thirty-three and one-third per cent. That is, a purchaser would receive $30,000 worth of stock upon payment of $10,000. Such a purchaser is entitled to receive dividends upon his stock the same as if he had paid the full value. Consequently it would appear upon the books of the company that the full amount had been paid, and the treasury of the company would appear to be in better shape than it actually was.

Assume, that under these circumstances a party, upon examination of the corporation's books, is induced to loan it a large sum of money. It subsequently develops that the purchaser upon the terms mentioned above has never paid in the full value of his stock. The principle of law governing such a case is as follows: Every subscriber to stock of a corporation guarantees the amount of the face value of the stock standing in his name shall be used in payment of the liabilities of the corporation. He cannot escape his liability to pay the full amount of his subscription into the treasury of the company for the benefit of its creditors by any agreement with the corporation. In other words, the contract would be valid as originally made, provided the rights of creditors did not intervene.

Transfer of Shares.

The right of a stockholder in a corporation, as represented by his certificate of stock, is personal property, and as such may be bought and sold like any other personal property. The by-laws of all corporations provide that no holder of a certificate of stock shall be recognized by the corporation or be entitled to receive dividends or vote at its elections until his name has been properly entered upon the company's books.

The means whereby a stockholder may sell his rights in a corporation is by transferring his certificates of shares to another. Such a transfer of shares in a corporation operates as a substitution of a new shareholder in the place of an outgoing shareholder, and an assumption by the former of all the rights and liabilities which attached to the latter, who is discharged from all further liability to contribute capital and loses all right to share in the company's profits and to participate in the management of its affairs.

When a transfer of shares has taken place the question arises, who is liable for unpaid calls, in determining which question it is necessary to distinguish between the rights of the corporation as against the parties to the transfer, and the rights and liabilities of the transferor and transferee as between each other.

It may be stated as a general rule that as between a company and its shareholders the party transferring shares is discharged from liability to pay calls made after the execution of the transfer, and that such liability rests upon the party receiving the shares (the transferee). One cannot, however, by transferring his shares to another avoid responsibility for calls made upon his stock prior to the transfer. After a call has been made, a corporation has a cause of action against a shareholder which cannot be discharged except with the corporation's express consent.

The liability for unpaid calls so far as the transferor and transferee of the shares are concerned depends altogether upon the agreement between them.

Having learned upon whom the law places liability to pay unpaid calls upon shares of stock in a corporation, let us next inquire who, as between the transferor and transferee of shares is entitled to dividends, payable out of the profits earned before the transfer, but which are not declared until after the transfer has been executed.

It has been decided that the shareholder at the time the dividend is declared is entitled thereto, regardless of the time said dividend was earned. It is necessary that the agents of a

corporation should know to whom it is liable to pay dividends which have been declared. A corporation is protected in paying dividends to those who are the legal holders of shares on the stock books of the company at the time the dividends are declared.

After a corporation has become insolvent shares of stock therein cease to be subject of legitimate traffic. A transfer thereafter would be but a subterfuge to avoid liability, which would not be permitted. It is the duty of the corporation to call in the outstanding capital, satisfy all creditors and wind up its business as soon as possible.

Registry of Transfers.

The by-laws of practically every corporation provide that its shares shall be transferable only by entry upon the books of the company, and that a new certificate shall be issued to the transferee upon a surrender of the outstanding certificate. This is for the purpose of providing the corporation and those dealing with it means of ascertaining who are its shareholders. Otherwise it would be impossible to know who are entitled to vote at the meetings, to whom dividends should be paid and who are liable as shareholders to the company as debtors on account of unpaid calls.

Shares of stock in a corporation are by general mercantile usage assignable by indorsement and delivery of the certificate issued to the owner as evidence of his rights. A power of attorney to execute a transfer upon the stock books of the corporation is contained upon the back of the certificate. If the assignment and power of attorney are executed in blank, the certificate may pass from one person to another and the last holder will have the right to fill up the assignment and power of attorney and complete the transfer by entry upon the books of the corporation.

A corporation is compelled to enter a valid transfer of the shares upon its books. If the officers of a corporation refuse to do so, the transferee may enforce his rights by a bill in equity. In a well-known case a certain party, by writing a pamphlet attacking the methods of the Standard Oil Company, made himself very obnoxious to that corporation. He subsequently purchased some of its stock and its officers refused to enter his name upon the stock books as the legal owner thereof. By application to a court of equity he forced them to do so. Although a stock certificate is in neither form nor character a negotiable instrument, it approximates it as nearly as practicable. The purchaser is assured under the seal of the corporation that the stockholder is entitled to so much stock, which can be trans-

ferred on the books of the corporation in person or by attorney, when the certificate outstanding is surrendered. This is a guarantee that whoever in good faith buys the stock and produces to the corporation the certificate, regularly assigned, is entitled to have the stock transferred to him.

Rights and Remedies of Stockholders.

In considering the rights and remedies of the individual members or shareholders in a corporation it is of the utmost importance to bear clearly in mind that, while a corporation is regarded in law as an artificial person or entity viewed as a collective body, it is in reality an association of individuals, and no law can alter this fact. Hence there is a distinction between those rights which belong to the shareholders individually and those belonging to them collectively or in their corporate capacity. An illustration will perhaps make this distinction clear. After a dividend has been declared by the proper agents of the corporation each shareholder has the right to sue the corporation to recover the amount payable on his shares, this being an individual right. If, however, the agents of a corporation should wrongfully refuse to declare a dividend when it is their duty to distribute the profits earned, this would affect the collective rights of all the stockholders, but no one could sue for any particular portion of the undivided profits. The right to have a dividend declared must be enforced by action in the corporation, rather than against it, being a collective rather than an individual right.

Moreover, in every corporation the entire management of the corporate affairs is entrusted to certain individuals, the agents authorized to act for the company and who are given the power of protecting the company from injuries and enforcing its collective rights. Hence wrongs which affect the entire body of shareholders affects the corporation, and redress must be had through its proper agent, otherwise great inconvenience and unnecessary expense would result if any individual shareholder could bring suit for every injury to the corporate rights. Therefore, to maintain a suit to enforce the rights of an individual stockholder, it must first be proven that the proper agent or agents of the corporation have refused to act and that all remedies within the corporation have been first exhausted.

If the agents of a corporation are themselves guilty of a wrong, a shareholder may maintain a suit in court without proving that he first requested the guilty agents to proceed in the name of the corporation against themselves, which would be an absurdity.

It may be laid down as a settled rule that no shareholder can interfere with the management or dictate the policy a corporation shall follow so long as the duly appointed agents are acting honestly within the discretionary power conferred upon them by the charter or by-laws. If a shareholder is dissatisfied with the management of a corporation his remedy is to elect other agents in the manner and at the time provided by the charter.

If, under proper circumstances, a shareholder brings suit to protect his interest in a corporation the relief granted will inure to the benefit of the corporation and all other shareholders similarly interested, who are regarded as parties thereto and may properly be joined as complainants, although it is not necessary to do so.

Neither the agents of a corporation nor a majority of its stockholders have any right to direct its affairs except in accordance with the provisions of its charter, and any action to the contrary will give any aggrieved stockholder a right to bring suit to restrain the act or recover damages sustained thereby.

Every stockholder has, as incidental to his ownership of stock in a corporation, the right to vote for the election of its officers or agents and for the principles embodied in its constitution and by-laws, and may sometimes vote to decide the general policy upon which the business of the corporation is to be conducted, if such right is given by the by-laws. Any stockholder may delegate this right to vote at a particular meeting, and the party receiving this right is called a proxy. The power of a proxy to vote may be withdrawn at any time.

Right to Receive Dividends.

The object for which every ordinary business corporation is formed is the pecuniary profit of its shareholders or members. Consequently any net increase of the capital of a corporation is distributable as profits to each shareholder in proportion to the number of shares held by him.

Dividends can only be paid out of the profits of the net increase of capital, and cannot be drawn upon the capital contributed by the shareholders for the purpose of carrying on the company's business. The surplus acquired by a corporation over and above its capital and debts incurred for running expenses becomes profits, and may be divided among the shareholders or used to expand the company's business as its authorized agents, in the exercise of a proper discretion, may direct. The directors of a corporation are not required to divide the entire profits earned, but may reserve sufficient to meet future or contingent claims and to enlarge the corporate business.

Many corporations create two classes of stock, common and preferred. The holder of preferred stock is entitled to receive a dividend up to a certain percentage, as indicated in his certificate of stock, before the holder of common stock has any right to claim a dividend. The right to issue preferred stock must be specially granted.

A dividend properly declared by the directors of a corporation cannot be revoked subsequently. All shareholders on the books of the corporation at the time a dividend is declared have a legal claim against the company for the payment of the amount of dividend due them.

Right to Preemption.

If a corporation decides to increase its capital by issuing an additional amount of new stock, the stockholders must first be given the right to purchase an amount proportionate to the number of shares held by them in the company at the time the new stock is issued before the same can be placed upon the market. This right is given to the stockholder in order that he may preserve his voice in the management of the company's affairs. If the stockholder refuses to accept and pay for his part of a new issue of shares within the time limited by the board of directors, his right of preemption becomes forfeited.

Right to Examine the Company's Books.

It is apparent that if every shareholder of a large corporation was given the right to examine its books at pleasure it would be impossible to keep them in a proper manner. Consequently the law in some states holds that the books of a corporation may only be examined at a meeting duly convened by agents appointed by a majority of the shareholders. The better authority is to the effect that "unless the charter provides otherwise, a shareholder in a trading corporation has the right to inspect its books and papers, for a definite and proper purpose, at reasonable times."

The Management of Corporations.

A corporation may do any acts necessary to prosecute its legitimate business in the same manner as an individual or copartnership engaged in a similar line of business. Thus it has the right to purchase and sell property, to enter into contracts, to bring and defend suits at law or in equity.

The management of the affairs of a corporation is, as we have seen, delegated by a majority of the shareholders to partic-

ular agents, usually a board of directors, president, secretary and treasurer, etc. A majority of a corporation is a majority of those stockholders present at a regularly called meeting, providing a quorum of the whole be present; and need not necessarily be a majority of all of the shareholders of the company.

In the election of officers to manage the corporation, or in meetings at which other matters are to be voted on by the shareholders, the custom has become well established to give each stockholder one vote for each share of stock which he holds, otherwise one holding a hundred shares of stock would have no more authority than a man holding ten shares which is contrary to principles of justice, being controlled by statute ordinarily. It is necessary that all the shareholders be duly notified of a meeting before it is held, in the absence of which notice no proper action can be taken. The majority has the right at a regularly appointed meeting to make reasonable rules or regulations or by-laws for governing the corporation, this power of making by-laws being given in the charter of every business corporation, but such by-laws as are enacted must not be contrary to the charter or the general laws of the land.

Every shareholder is bound by the by-laws adopted by the majority on behalf of the corporation under authority of the charter. Consequently no agent of the corporation can bind it by any act in violation of the company's by-laws. The principles of the law of agency are equally as applicable to corporations as to individuals. The directors of a corporation, who are agents appointed to regulate its management, should be men of practical business experience and judgment. Ordinarily they are required to be shareholders in the company and are not entitled to compensation for their official services as directors. But if a director is engaged to render services outside of his duties as director he is entitled to reasonable compensation for his services.

The board of directors has no authority to wind up the business of the corporation or sell any property necessary to carry it on. The directors are merely agents of the company whose general powers are regulated by its charter and by-laws. The value of the business as a commercial speculation and the advisability of carrying it on are matters which concern the shareholders who have embarked in the business and not their managing agents. The board of directors of a corporation occupy a fiduciary or trust relation thereto. Consequently the directors cannot bind the corporation by any contract made with themselves personally or by any transaction with third parties in which they have a private interest. The theory of the law is that a director should

not be allowed to obtain any advantage to himself through his control over the company. Hence they cannot lawfully by any arrangement secure to themselves a share in the profits of any transaction to which the corporation is a party.

The rule which disqualifies an agent from representing his principal in any transaction in which his personal interests are opposed to those of his principal restricts the directors of a corporation from dealing with another corporation in which they are shareholders, if their interest in the latter company might induce them to favor it at the expense of the corporation whose interests have been intrusted to their care as directors.

Ordinarily the directors of a corporation cannot act singly but only as a board at a meeting regularly called at which a quorum is present and in which a majority vote on all questions is necessary to control or bind the corporation.

Corporations, we have seen, are liable on all contracts entered into by their authorized agents if within the scope of their authority. Similarly a corporation is bound by the torts of its agents provided they are done in the course of employment and further in discharge of a duty owed the employer. The only exception to the rule that a corporation is liable for the torts of its agents is presented in the case of charitable corporations. A hospital, for example, would not be responsible for the wrongful acts of its servants, this rule being based upon principles of public policy. Thus a corporation is liable for a trespass upon the lands of another or for an assault committed or nuisance maintained by any officer or agent of the corporation in the discharge of his usual employment.

A corporation is also liable for the negligence of any of its agents. A corporation is also liable for failure to provide its employees with a safe place within which to work and safe tools with which to work as well as proper instructions regarding work of a dangerous character.

It is obvious that a corporation cannot commit a crime. However, it is responsible for the criminal acts of its agents to the same extent that an individual is bound by the criminal acts of his agent. Thus the Standard Oil Company was held criminally liable for the acts of its agents in accepting rebates from the Chicago and Alton Railroad Company contrary to the terms of the Elkins Act.

Ultra Vires Acts.

In view of the fact that the state exercises more or less control over all corporations chartered by it, if a corporation assumes

powers not specifically granted to it, the state, through its Attorney General, may take action to forfeit its charter on the ground that such acts are *ultra vires* and void.

At the beginning of this subject it was pointed out that the creation of a corporation is in the nature of a contract between the state and the incorporators. Unless the right to revoke a charter is expressly reserved by the state in granting it, the state would have no right of revocation, the Constitution of the United States providing that the obligation of a contract shall not be impaired. Where the right is reserved, a revocation of the charter of a private corporation is not a violation of the constitutional provision above set forth. A corporation may, therefore, be dissolved by a forfeiture or revocation of its charter, the causes justifying a forfeiture being either a misuse or nonuse of its franchise or a substantial departure from the purposes for which it was created.

Corporations may further be dissolved by expiration of time, *i. e.*, when the time is limited in the charter during which a corporation shall exist, the corporation ceases to exist upon the expiration of the specified time. A corporation may also be dissolved by a voluntary surrender of its charter and acceptance of said surrender by the state.

The dissolution of a corporation has no more effect upon its debts and liabilities than the death of a private person has upon obligations contracted by him. When a corporation has been dissolved by any legal method, the creditors or stockholders may ask for the appointment of a receiver, who shall take charge of all the real and personal property owned by the late corporation and hold it as a trust fund for the payment of all debts contracted by it. If any surplus remains after all legal claims have been paid, it will be divided among the stockholders in proportion to the number of shares held by them.

In conclusion, the superior advantages of a corporation over every form of business association cannot be emphasized too strongly. In the first place, a corporation, unlike a partnership, may enjoy perpetual existence, whereas a partnership becomes dissolved by the death or retirement of any member. In the second place, individuals who invest their capital in a corporation risk nothing beyond the actual amount which they pay into the coffers of the corporation, and if, perchance, the business of the corporation becomes a disastrous failure, a stockholder only loses what he has paid in and no creditors can come upon his property for the payment of their claims. It is for this reason particularly that the enterprises, large and small, who prefer to incorporate

rather than risk the fortunes of their membership, are multiplying every year. In the third place, a business can be conducted much more conveniently and expeditiously in the form of a corporation than otherwise, in view of the fact that the powers of the agents authorized to transact its business are definitely prescribed by the charter and by-laws of the corporation.

The cost of incorporating varies in the different states, but considering the innumerable advantages appertaining to a corporation, a charter may be procured for a very nominal amount.

IRREVOCABLE STOCK POWER

KNOW ALL MEN BY THESE PRESENTS, THAT

for value received, have bargained, sold, assigned, and transferred, and by these presents do bargain, sell, assign, and transfer unto

Shares

of the Stock of the

standing in name on the books of the

and do hereby constitute and appoint

true and lawful Attorney, irrevocable, for and in

name and stead, but to use, to sell, assign, transfer and set over, all or any part of the said Stock, and for that purpose to make and execute all necessary acts of assignment and transfer, and one or more persons to substitute with like full power, hereby

ratifying and confirming all that said Attorney, or substitute or substitutes, shall lawfully do by virtue hereof.

IN WITNESS WHEREOF, *have hereunto set*

hand and seal the day of 19

SEALED AND DELIVERED
IN THE PRESENCE OF

[L. S.]

Signature guaranteed.

PROXY BY INDIVIDUAL

KNOW ALL MEN BY THESE PRESENTS, *That I,*
of , *do hereby appoint*
of , *or in his absence*
of , *to be my substitute and Proxy, for me and in my name and in my behalf to vote at the election of officers of* *or on any other business relating to the said Company, at the next annual meeting, or at any adjourned or other meeting of the Stockholders of said Company as fully as I might or could were I present, and I hereby revoke any other proxy heretofore given by me.*

IN WITNESS WHEREOF, *I have hereunto set my hand and seal this day of , 19 .*

Witness present:

[L.S.]

STOCK SUBSCRIPTION PRIOR TO ORGANIZATION

WHEREAS, *it is proposed to organize, under the laws of the State of , a corporation to be known as , or by such other name as the parties in interest may determine;*

AND WHEREAS, *it is proposed that said company shall have a capital stock of dollars and shall transact the business of*

NOW, THEREFORE, *the signers hereto, in consideration of their mutual promises, do severally agree to and with each other and with , the promoter and founder of said company, that they will take and do hereby severally subscribe to the capital stock of said company to the amount of the par value of stock set opposite their respective names.*

This agreement is conditioned upon the procuring of said subscriptions of at least dollars to said capital stock on or before the day of 19 .

Date.	*Names.*	*No. Shares.*	*Amounts.*

NEGOTIABLE INSTRUMENTS

Characteristics—Essential Elements—Various Kinds Defined—Indorsements—Rights of the Holder—Liabilities of the Parties Thereto—Defenses—Conflict of Laws.

IT was pointed out in our discussion of the subject of contracts that negotiable instruments formed certain exceptions to the law applicable to contracts in general. We will now enter upon a more careful inquiry into the law governing this particular class of contracts, which was derived from a branch of the law usually referred to as the "Custom of Merchants."

When international commerce developed and expanded, it became imperative that laws should be formed, common to all countries, governing transactions between merchants residing in various sections of the world; otherwise disputes would continually arise between a merchant of one country trading with a merchant of another as to what law should govern the transaction between them. To promote commerce by overcoming these difficulties the rules comprised in the "Custom of Merchants" were evolved, among the most important of which are the laws governing the purchase and sale of negotiable paper. The laws affecting merchant and merchant in every country in the world, having been founded on the system of rules known as the "Custom of Merchants," are practically uniform. Consequently business men in dealing with each other in different parts of the world transfer values almost exclusively through the medium of bills of exchange and promissory notes.

There are various kinds of negotiable instruments, the most common of which are promissory notes and bills of exchange, which we will first consider. But at the outset let us clearly understand what is a negotiable instrument.

"A negotiable instrument is that medium for the exchange of values made by an individual on the strength of his ability to meet the obligation thus created, and accepted by others on their confidence in the financial credit of such maker, and which is as good in the hands of third persons as in the hands of the original parties."

A negotiable instrument is in reality but the transfer of that mutual confidence between man and man upon which the greater volume of business in the commercial world must of necessity be

based, and its transfer from hand to hand may be accomplished with the same legal effect as the transfer of money.

Characteristics of a Negotiable Instrument.

A negotiable instrument is in form and substance a contract in writing and possesses four characteristics—

1. It may be transferred by the original holder or owner and the transferee in his own name can sue the maker or subsequent promissor for the non-fulfilment of his promise.

2. If a negotiable instrument is stolen and transferred by the thief to another for a valuable consideration in the usual course of business before maturity, a perfect title would be acquired by the purchaser, which would not be the case if a horse or any other species of property were stolen and resold.

3. The holder of a negotiable instrument is entitled to its full face value, and such defense as the maker of the instrument may have against the payee would not be recognized against a subsequent holder who acquired the instrument in the usual course of business before maturity and without knowledge of any defect.

4. A negotiable instrument imports a consideration the same as a sealed instrument. This quality was first possessed by bills of exchange, but later was extended by statute to include promissory notes. The fact that no consideration was given for the instrument may be proved by the immediate parties, but not against subsequent parties.

Essential Elements of a Negotiable Instrument.

Under the law governing negotiable instruments, which has been reduced to a code, in practically every state of the Union, a negotiable instrument to be valid must conform strictly to the following requirements:

1. It must be in writing, and signed by the maker or drawer.

2. It must contain an unconditional promise or order to pay a certain sum in money.

3. It must be payable on demand or at a fixed or determinable future time.

4. It must be payable to order or to bearer.

5. Where the instrument is addressed to a drawee, he must be named or otherwise indicated with reasonable certainty.

6. The parties to a negotiable instrument must be competent to enter into a contract.

7. A negotiable instrument must be founded on a valid consideration.

8. Actual delivery must be made to give effect to the instrument.

Kinds of Negotiable Instruments.

The words most frequently employed to indicate the negotiability of an instrument are the words "to order," "or bearer," but any words from which it can be inferred that the maker intended the instrument to be negotiable will have that effect. Consequently there are several kinds of negotiable instruments, the best known in the commercial world being promissory notes, bills of exchange and bank checks. Warehouse receipts, bills of lading, coupon bonds and clearing house due bills are less common forms of negotiable paper which we will consider later.

Definition of a Promissory Note.

A promissory note is an unconditional promise in writing to pay a certain sum of money to the order of some other person or persons at a definite time. The following is a usual form of promissory note:

$5,000.00 *Philadelphia, August 1, 193.*

Sixty days after date I promise to pay to the order of John Doe Five Thousand Dollars, at the Girard Trust Company of Philadelphia, for value received, with interest.

Richard Roe.

Richard Roe, the party promising to pay the money, is called the "maker" of the note; John Doe, the party to whom the money is to be paid, is called the "payee."

If the above note was made payable to John Doe or bearer, it could be transferred by delivery, but being made payable "to order," it can only be transferred by indorsement, which is done by writing the payee's name across the back of the note. The party who indorses the note is called the "indorser" and the party who receives the same is called the "indorsee."

Definition of a Bill of Exchange.

"A bill of exchange is an unconditional order in writing, addressed by one person to another; signed by the person giving it, requiring the person to whom it is addressed to pay, on demand or at a fixed or determinable future time, a sum certain in money to order or to bearer."

A usual form of a bill of exchange is as follows:

$5,000.00. *Philadelphia, August 1, 193 .*

At sight pay to John Doe or order Five Thousand Dollars for value received, and place the same to the account of

Richard Roe.

To J. J. Jones & Co.,
Boston, Mass.

In every bill of exchange there are three original parties. The party giving the bill is called the drawer (Richard Roe), the party to be paid the money is called the payee (John Doe), and the party on whom the order is given is called the drawee, who, upon accepting the bill, is called the acceptor (J. J. Jones & Co.)

Bills of exchange are of two kinds, foreign and inland. A foreign bill of exchange is one that is drawn in one country and payable in another; an inland bill of exchange is one that is drawn and payable in the same country. The several states of the United States are regarded as foreign to one another in drawing bills. Thus if the drawer and drawee are citizens of Pennsylvania, and the bill is payable in New York, it is a foreign bill of exchange. If, however, the drawer and payee live in Pennsylvania, and the drawee in New York, it is an inland bill. Care should be exercised in disclosing the states in which the parties live, as the courts cannot infer their residence from the place mentioned on the instrument.

A check is in reality an inland bill of exchange, and has been judicially defined as follows:

"A check is a written order or request addressed to a third person having funds in hand, requesting him to pay on presentment to a person named, or to bearer, a given sum of money."

In our definition of a promissory note we observed that it must contain an unconditional promise to pay. Now, a promise to pay is unconditional within the meaning of the law although coupled with an indication of a particular fund out of which reimbursement is to be made, or a particular account to be debited with the amount, or a statement of the transaction giving rise to the instrument. But an order or promise to pay out of a particular fund is conditional. It must be further borne in mind that the words constituting a promise to pay must be distinguished from a request or a mere recognition of an existing debt. For example, a document containing the words "I. O. U. $50," would not constitute a promise, being only an admission of a debt. If the paper had read "I. O. U. $50 to be paid on demand," these

words would have constituted a definite promise, and the paper would be a promissory note.

An instrument reading: "I promise to pay to John Doe or order Five Hundred Dollars out of the income of my farm, Richard Roe," would not be a promissory note, and could not properly be negotiated, because the promise is conditional upon an income arising out of Richard Roe's farm, and, as we pointed out above, a promissory note must contain an unconditional promise.

The promise contained in a promissory note must be single. In an ordinary contract a man may bind himself to the performance of several promises, but such an instrument is not negotiable. An instrument in which Richard Roe promises to pay John Doe one hundred dollars, and also to deliver to John Doe certain chattels in his possession, was decided not to be a promissory note, for the reason that it contained a promise not only to pay a sum of money, but also to do something else—to wit, deliver certain chattels, which latter promise destroyed the negotiability of the paper.

Another element necessary to constitute a valid promissory note is that the promise must be for the payment of money, by which is meant the medium of exchange which is legal tender at the place where the note is to be paid.

Furthermore, there must be no uncertainty as to the obligation of the maker. In other words, the money promised to be paid must be a sum certain, a definite amount. This is to enable any holder of the note to determine its value immediately. The time when the money is payable must also be set forth definitely. An instrument is payable at a determinable future time, within the meaning of the law, although expressed to be payable (1) at a fixed period after date or sight, or (2) on or before a fixed determinable future time specified therein; or (3) on or at a fixed period after the occurrence of a specified event, which is certain to happen though the time of happening be uncertain.

Consideration.

The presence of a consideration is essential to the validity of every contract set forth in a bill or note. There is a *prima facie* presumption that every negotiable instrument has been issued for a valuable consideration and every person whose signature appears thereon to have become a party thereto for value.

The absence of consideration may be set up as a defense to the payment of a note as between the original parties, but not against a subsequent holder for value in due course. The absence

of consideration to an indorser of a note does not affect its negotiability or validity.

We referred above to the fact that a negotiable instrument must be payable on demand or at a fixed or determinable future time. Such an instrument is payable on demand (1) where it is expressed to be payable on demand, or at sight, or on presentation; or (2) in which no time for payment is expressed. The sum payable is a sum certain within the meaning of the law, although it is made payable with interest, by stated instalments with a provision that upon default in payment of any instalment or of interest, the whole shall become due, or with exchange, whether at a fixed rate or at the current rate, or with costs of collection or an attorney's fee, in case payment shall not be made at maturity.

Although an instrument which contains an order or promise to do any act in addition to the payment of money, is not negotiable, the negotiable character of an instrument is not affected by a provision which—

(1) Authorizes the sale of collateral securities in case the instrument be not paid at maturity; or

(2) Authorizes a confession of judgment if the instrument be not paid at maturity; or

(3) Waives the benefit of any law intended for the advantage or protection of the obligor; or

(4) Gives the holder an election to require something to be done in lieu of payment of money.

It is not necessary that a bill of exchange or promissory note be dated to render it negotiable. It may be issued undated, antedated or postdated. If the instrument is undated any holder may fill in the true date of issue or acceptance, but, although a holder may fill up a blank date, he cannot alter the date on an instrument without subjecting himself to the liability of criminal prosecution for forgery, as the date is a material part of a bill or note.

A negotiable instrument is payable to order when it is drawn payable to the order of a specified person, or to him or his order. It may be drawn payable to the order of (1) a payee who is not maker, drawer or drawee; or (2) the drawer or maker; or (3) the drawee; or (4) two or more payees jointly; or (5) one or more of several payees; or (6) the holder of an office for the time being.

Regardless of whose order the instrument is made payable to, the payee must be named or otherwise indicated therein with reasonable certainty.

A negotiable instrument payable to Adam Smith or order

can only be transferred by Adam Smith writing his name on the back of the paper, Adam Smith thus becoming responsible as indorser for the payment of the amount ordered to be paid the holder. If a note payable "to order" be indorsed "to bearer" it could thereafter be transferred by simple delivery.

A negotiable instrument is payable to bearer (1) when it is expressed to be so payable; or (2) when it is payable to a person named therein or bearer; or (3) when it is payable to the order of a fictitious or non-existing person, and such fact was known to the party making it so payable; or (4) when the name of the payee does not purport to be the name of any person; or (5) when the last indorsement is an indorsement in blank. When an instrument is payable to bearer it is transferable by delivery.

Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto, delivery meaning the transfer of possession from one person to another, a negotiable instrument taking effect from the time of delivery, rather than the date it bears. Delivery, to be effectual, must be made by or with the authority of the maker, drawer, acceptor or indorser, as the case may be.

A negotiable instrument made and delivered on the Sabbath is void. If, however, the bill or note is merely dated on Sunday, but is not delivered until some other day, it is valid.

Competency of Parties.

A negotiable instrument being the result of a contract, the parties thereto must have legal capacity to enforce and execute their promises or undertakings, otherwise the instrument is invalid. Thus a minor, being unable to enter into a legal contract, cannot make or indorse a bill of exchange or promissory note. Inasmuch, however, as a minor is bound to pay for his necessaries, a bill or note given by a minor in payment of necessaries is valid.

The Courts throughout the country in applying the various statutes affecting married women, have held that a married woman has the right to contract and give a note for necessaries, land, household furniture, horses, or for the improvement of her real estate, or for instruments used by her husband upon her farm, or to pay his debts. A married woman may also assign her personal property or mortgage her real estate as security for her husband's debts, or give a note in payment of an insurance policy taken out on his life for her benefit, or in payment of any debt contracted by her husband for her benefit.

A married woman cannot become an accommodation indorser, guarantor or surety for another. An antenuptial contract made by a married woman is not within the above prohibition and may be revived after marriage. To determine the rights of married women in connection with negotiable instruments the reader should consult the Abstract of Married Women's Acts set forth at the conclusion of the Chapter on Contracts.

A bill or note given by a lunatic or habitual drunkard, so declared by inquisition, is void, and an inquiry can be made into the consideration of negotiable paper made by a lunatic, even when purchased by a third party in good faith. The defense of drunkenness, however, cannot be set up against the holder of a note for value who has taken it in good faith, although the defense would be good as between the original parties.

The distinction between a promissory note and a bill of exchange resides in the fact that the former is an individual promise to pay a certain sum of money, whereas the latter is an order to some third person to pay another a sum of money.

The language of a bill or note is sometimes ambiguous, in which event the following rules of construction are applicable:

1. If there is a discrepancy between the amount payable as expressed in words and figures, the amount indicated by the words is the amount payable.

2. If payment of interest is provided for, but the date from which interest is to run is not specified, it runs from the date of the instrument, and if undated from the issue of the instrument, any instrument undated being regarded as dated from the time it issued.

3. In case there is any disparity between the written and printed terms of an instrument the written provisions will prevail.

4. Where the instrument is so ambiguous as to give rise to doubt as to whether or not it is a bill or note, it is optional with the holder to treat it as either.

5. If a signature is so placed upon an instrument that it is doubtful in what capacity a party intended signing, he is to be regarded as an indorser.

6. If an instrument signed by two or more persons contains the words "I promise to pay" the holder can sue either signer alone or all jointly, they being jointly and severally liable.

Bearing in mind that negotiable paper circulates from one to another with practically the same freedom as money, let us inquire into the manner in which bills and notes may pass from one to another. Now, money changes ownership by mere delivery, which means a transfer of possession, either actual or construc-

tive, from one person to another. Something further is required, however, to transfer properly possession of a bill of exchange, as a consideration of the following will indicate:

Williamsport, Pa., Aug. 15, 193 .

$500.00.

At sixty days' sight, pay to the order of Richard Roe Five Hundred Dollars.

For value received. *John Doe.*

To John Smith & Co.,
Philadelphia, Pa.

Richard Roe is the party entitled to receive the money as appears from the face of the instrument, but suppose Richard Roe desires to pay a debt of $500 to Owen Jenkins; he cannot do so by merely delivering the bill to him, because if Owen Jenkins presented the same to John Smith & Co. he could not get the money, for the reason that John Smith & Co. are not ordered to pay $500 to Owen Jenkins, but to Richard Roe. This difficulty is overcome by Richard Roe writing on the back of the bill, "Pay the within to Owen Jenkins or order" and signing his name. If Richard Roe merely signs his name on the back of the instrument he is said to indorse the same in blank, in which event the bill becomes payable to bearer. By signing his name on the back of the instrument Richard Roe becomes an indorser thereof. Owen Jenkins is known as the indorsee, and if he desires to transfer the bill to another he may do so by indorsing the same himself, and thus the instrument may pass from hand to hand indefinitely.

An Accommodation Indorser.

A party who places his name on the back of a negotiable instrument who has not received value for so doing, but who does so to give credit to the maker, is known as an accommodation indorser. Let us assume that a promissory note is executed as follows:

Three months after date, I promise to pay to the order of Richard Roe One Hundred Dollars.

John Doe.

Richard Roe desires to raise funds by negotiating the note and offers it to Owen Jenkins, who, distrusting the credit of both Richard Roe and John Doe, refuses to buy it unless a finan-

cially responsible party will place his name on the back of the note. John Smith, for the purpose of giving credit to the note, indorses the same. John Smith in this case is an accommodation indorser.

An accommodation party is one who has signed the instrument as maker, drawer, acceptor or indorser, without receiving value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party.

The indorsement of a promissory note or bill of exchange, whether it be regular or anomalous, must be written on the instrument itself or upon paper attached thereto. Such an indorsement must be of the whole instrument; an indorsement purporting to transfer to the indorsee a part only of the amount payable, or to transfer the instrument to two or more indorsees severally, does not constitute a proper negotiation of the instrument. However, if the instrument has been paid in part, it may be indorsed as to the residue. An indorsement may be either special or in blank, and it may also be either restrictive or qualified or conditional.

A special indorsement specifies the person to whom or to whose order the instrument is payable and in order to further negotiate the instrument it is necessary that such indorsee place his indorsement thereon. An indorsement in blank, as previously noted, specifies no indorsee, being payable to bearer and is negotiated by delivery. A blank indorsement may be converted by the holder into a special indorsement by writing above the signature of an indorser any contract consistent with the character of the indorsement.

An indorsement is restrictive which prohibits the further negotiation of the instrument or which constitutes the indorsee the agent of the indorser, or which vests the title in the indorsee in trust for some other person. Such a restrictive indorsement confers the right upon the indorsee to receive payment of the instrument, to bring any action that the indorser could bring thereon, and to transfer his rights as such indorsee where the form of the indorsement authorizes him to do so. However, all subsequent indorsees acquire only the title which the first indorsee had under the restrictive indorsement.

A qualified indorsement is one in which the indorser is but an assignor of the title of the instrument, and is made by adding

to the indorser's signature the words "without recourse," or any similar words. Such an indorsement does not alter the negotiable character of the instrument, but operates as a protection to the indorser.

Where an instrument is payable to the order of two or more payees or indorsees, who are not partners, they must all indorse unless the one indorsing has authority to indorse for the others. It is well settled that the signature of any party to a negotiable instrument may be made by a duly authorized agent, and no particular form of appointment is necessary for this purpose, as the authority of an agent may be established as in other cases of agency.

The law provides that where an instrument is drawn or indorsed to a person as "cashier," or other fiscal officer of a bank or corporation of any kind, it is deemed to be payable to the bank or corporation of which he is such officer. Such an instrument may be negotiated by either the indorsement of the bank or corporation or by the indorsement of the officer.

If the name of the payee or indorsee of a bill or note is misspelled, the same should be indorsed in the name appearing on the instrument, with the addition of the proper signature.

A negotiable instrument continues to be negotiable until it is indorsed restrictively or is discharged by payment.

Time of Transfer.

It is important to determine the time when a bill or note was transferred, inasmuch as the rights of the purchaser or indorsee depend upon whether the instrument was transferred before or after maturity.

An innocent holder for value of a bill or note may enforce payment on it regardless of the equities existing between the original parties. For example, the finder of a lost bill or note may sell the same to a third party, and if such party was ignorant of the fact that he was buying a lost instrument, he could recover the full amount thereof. A purchaser for value of a stolen bill or note may likewise recover its amount, provided, of course, that he was ignorant of the fact. That a lost or stolen negotiable instrument may be transferred by one having no title, so as to confer rights upon an innocent holder for value, is directly opposed to the settled principles of law that no property can be transferred by one not having title thereto, but an exception is made in the case of negotiable instruments on account of their peculiar nature and function.

The purchaser of a bill or note after maturity takes the same

at his peril, for, although such an instrument is still negotiable, it is subject to the same defenses as if it were non-negotiable. Any one purchasing a negotiable instrument after maturity must necessarily know that some good reason existed for its non-payment, and if a man is not prudent enough to ascertain why the bill or note was not paid before maturity, he should and must suffer the consequences.

Rights of the Holder in General.

The holder of a negotiable instrument may recover the amount payable thereon in his own name, and payment to him in due course discharges the instrument. In any discussion of negotiable instruments, the phrase "a holder in due course" is frequently employed. Let us inquire, therefore, who is a holder in due course.

A holder in due course is one who obtains possession of an instrument under the following conditions:

1. That it is complete and regular upon its face;
2. That he became the holder of it before it was overdue, and without notice that it had been previously dishonored;
3. That he took it in good faith and for value; and
4. That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it.

It will also be noted that where an instrument payable on demand is negotiated an unreasonable length of time after its issue the holder is not deemed a holder in due course.

The title of a negotiable instrument is defective within the meaning of the law if the person who negotiates it obtained the instrument or any signature thereto by fraud, duress or force, or other unlawful means, or for any illegal consideration, or when he negotiates it in breach of faith or under such circumstances as amount to a fraud.

A holder in due course of a negotiable instrument holds the same free from any defect of title in prior parties and free from such defenses as are available, to prior parties among themselves. Such a holder in due course may enforce payment of the instrument for the full amount thereof against any and all parties liable thereon.

The law further specifies that a negotiable instrument in the hands of any holder other than one not in due course is subject to the same defenses as a non-negotiable instrument. The law presumes that every holder of a negotiable instrument is a holder in due course.

Presentment for Payment.

It is not necessary to make presentment for payment in order to charge the person primarily liable on the instrument; however, if an instrument by its terms is payable at a particular place, and he is able and willing to pay it there at maturity, such would be equivalent to a tender of payment on his part. But with the exceptions to be hereinafter mentioned, presentment for payment is necessary in order to charge the drawers and indorsers, and must be made and proved by the original parties before any liability attaches to the subsequent parties or those who are conditionally liable.

In case the instrument is not payable on demand, presentment must be made on the day the instrument falls due. If the instrument is payable on demand, it must be presented within a reasonable time after it was issued, but in the case of a bill of exchange, presentment for payment will be sufficient if made within a reasonable time after the last negotiation of the instrument.

In order to meet the requirements of the law, presentment for payment must be made:

1. By the holder or some one authorized to receive payment for the holder;

2. At a reasonable hour on a business day;

3. At a proper place, which requirement is complied with when the instrument is presented at the place of payment specified therein, or where no place is mentioned, but the address is given in the instrument of the party to make payment, and it is there presented; or if no address is given and no place of payment specified, and the instrument is presented at the usual place of business or residence of the person to make payment; in any other case it is presented to the person to make payment wherever he can be found, or is presented at his last known place of business or residence;

4. To the person primarily liable on the instrument or in the event of such person being absent or inaccessible presentment will be sufficient if made to any person found at the place where the instrument is made.

On the subject of negotiable instruments, it is necessary to show the instrument to the person from whom payment is demanded and if paid by him the instrument must be delivered up.

Any clerk or employee of the holder, executor or administrator in case of the death of the holder, or an assignee, if the holder be a bankrupt, may act as the agent in making presentment on behalf of the holder.

If a negotiable instrument is payable at a bank, presentment

for payment must be made during banking hours, unless the person to make payment has no funds in bank to meet payment during banking hours, in which event presentment is sufficient if made at any hour before the bank is closed on that day.

It is not necessary to make presentment for payment in order to charge the drawer or maker of a bill of exchange where he has no right to expect or require that the drawer or acceptor will pay the instrument, or in order to charge an indorser where the instrument was made or accepted for his accommodation, and he has no right to expect that it will be paid if presented.

Delay in making presentment for payment is excused if resulting from circumstances beyond the control of the holder and which delay is not due to his default, misconduct or negligence.

It is not necessary to make presentment for payment (1) when, after exercising proper diligence, presentment as required by the act cannot be made; (2) in cases where the drawee is a fictitious person; (3) where there has been a waiver of presentment, either expressed or implied.

A negotiable instrument is dishonored for non-payment, when it has been properly presented for payment and payment is refused, or when presentment is excused and the instrument is overdue and unpaid.

Every negotiable instrument is payable at the time specified therein, and if the day of maturity falls on Sunday or any legal holiday, the same is payable on the next succeeding business day. Instruments falling due on Saturday are to be presented for payment on the next succeeding business day, except if an instrument is payable on demand, the holder may, at his option, present the same for payment at any time before twelve o'clock noon on Saturday when that entire day is not a holiday.

Liabilities of the Parties to a Negotiable Note.

We will next consider the liabilities of the parties to a negotiable instrument. The maker of a note assumes an absolute responsibility to pay the amount set forth on its face to the payee or any subsequent holder, when the note is due or at any subsequent time.

The maker of a note is not compelled to pay the same until the holder thereof has presented it for payment and tendered its surrender.

If the holder of a note is unfortunate enough to lose or destroy it he may apply to a court of equity, who would compel pay-

ment, but would require the holder to give the maker an indemnity bond, in which he insures the maker against any loss on account of having to pay the note a second time.

The drawer of a bill of exchange engages that on due presentment the instrument will be accepted or paid, or both, and if it be dishonored and the necessary proceedings taken on dishonor, he, the drawer, will pay the amount of the bill to the holder or to any subsequent indorser who may be compelled to pay the same.

Liabilities of the Acceptor of a Bill of Exchange.

When a bill of exchange is presented to the drawee, he may accept thereof, which he does by writing on the face of the instrument the word "Accepted," with the date and his signature.

The drawee then becomes the acceptor, and by accepting the instrument engages that he will pay it according to the tenor of his acceptance and admits:

1. The existence of the drawer, the genuineness of his signature and his capacity and authority to draw the instrument; and

2. The existence of the payee and his capacity to indorse.

If any person places his signature upon a negotiable instrument in any other capacity than as a maker, drawer or acceptor, he does so as an indorser unless he clearly indicates by appropriate words his intention to be found in some other capacity.

Every person who negotiates an instrument by delivery or by a qualified indorsement makes the following warranties:

1. That the instrument is genuine and in all respects what it purports to be.

2. That he has a good title to it.

3. That all prior parties had capacity to contract.

4. That he has no knowledge of any fact which would impair the validity of the instrument or render it valueless.

An indorser without qualification warrants the facts stated in the first three paragraphs above set forth, and further that the instrument was at the time of his indorsement valid. Such an indorser also engages that on due presentment the instrument shall be accepted or paid, or both, as the case may be, and that if it be dishonored and the necessary proceedings on dishonor be taken, he will pay the amount thereof to the holder or to any subsequent indorser who may be compelled to pay the same.

The only other person who can properly accept a bill of exchange is the drawee, and upon his refusal to accept the same, notice of dishonor must be given to the drawer and to each indorser, and any drawer or indorser to whom such notice is not given is discharged from liability.

When a bill of exchange is formally declared to be dishonored by a notary public it is said to be protested. When such an instrument is protested it may be accepted "*supra* protest" by any one on behalf of the drawer in order to protect him from immediate suit. Any one accepting a bill *supra* protest guarantees to pay the same, provided acceptance is refused by the drawee upon a second presentation and also provided the acceptor *supra* protest is notified thereof.

There are two kinds of liability which a party undertakes by becoming a party to a negotiable instrument. He may be either primarily liable, in which event he is the principal debtor and is the party bound to pay the amount owing; or he may be secondarily liable, and in which event he promises to pay in case some one else does not. Thus the drawer of a bill of exchange guarantees to the payee and all subsequent holders of the bill that the acceptor shall pay at maturity, and that if he does not, he, the drawer, will. Likewise a man who indorses a bill or note in payment of a debt warrants that it will be paid at maturity and that if it is not, he, the indorser, will pay it. It will, therefore, be noted that the drawer of a bill and the indorser of a bill or note are secondarily rather than primarily liable, the liability depending on certain conditions, which must be performed by the holder. As stated heretofore, the holder must take the instrument when due to the maker or acceptor and demand payment thereof, which proceeding is known as presentment. Furthermore, the holder of a bill of exchange must promptly notify the drawer or indorsers of its non-payment in order to hold them responsible.

Notice of Dishonor.

As it is necessary to give notice of dishonor to the drawer and to each indorser to hold them liable, let us consider the circumstances under which such notice must be given.

Notice of dishonor may be given by or on behalf of the holder or by any person to the instrument who might be compelled to pay it to the holder, and when such notice is given by or on behalf of the holder, it inures to the benefit of all subsequent holders.

The notice may be in writing or merely oral, and may be given in any terms which sufficiently identify the instrument and indicate that it has been dishonored by non-acceptance or non-payment.

Such notice may be given by delivering it personally or through the mails. If the party to whom notice should be given is dead, notice should be given to a personal representative, and

if there be none, must be sent to the last residence or place of business of the deceased.

The law requires that notice of dishonor must be given within the following times, if the person to give the notice and the person to receive notice reside in the same place:

1. If given at the place of business of the person to receive notice, it must be given before the close of business hours on the following day after the instrument is dishonored.

2. If given at his residence, it must be given before the usual hours of rest on the following day.

3. If notice is given through the mail, it must be deposited in the postoffice in time to reach him in the usual course on the next day.

Where, however, the persons to give and receive notice reside in different places, notice of dishonor must be given within the following times:

1. If sent by mail, it must be deposited in the postoffice in time to go by mail the day following the day of dishonor, or if there be no mail, at a convenient hour on that day, by the next mail thereafter.

2. If given otherwise than through the postoffice, then within the time that notice would have been received, in due course of mail, if it had been deposited in the postoffice within the time specified above.

Regardless of whether a miscarriage occurs through the mails, where notice of dishonor is duly addressed and deposited in the postoffice, the sender has given legal notice and is protected.

A party, upon receiving notice of dishonor, has the same time after receipt of said notice to give notice to antecedent parties that the holder has after dishonor.

It is possible for a man to waive the right to receive notice of dishonor, which may be done either before the time of giving notice has arrived or after an omission to give notice. All parties are bound if such a waiver is embodied in the instrument, but if written above the signature of an indorser it binds him only. A waiver of protest is a waiver of not only a formal protest, but also of presentment and notice of dishonor.

Failure to give notice of dishonor is excused when the delay is caused by circumstances beyond the control of the holder, if it is not imputable to his default, misconduct or negligence, but when the cause of delay ceases notice must be given with reasonable diligence.

Notice of dishonor is not required to be given to the drawer where the drawer and drawee are the same person, or where the

drawee is a fictitious person or one not having capacity to contract, or when the drawer is the person to whom the instrument is presented for payment. Notice of dishonor is also dispensed with where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument, or in case the drawer has countermanded payment of the instrument.

It is not necessary to give notice of dishonor to an indorser where the drawee is a fictitious person or a person not having capacity to contract, and the indorser was aware of the fact at the time he indorsed the instrument, or where the indorser is the person to whom the instrument is presented for payment, or where the instrument was made or accepted for the accommodation of the indorser.

If notice has been given of dishonor by non-acceptance, notice of a subsequent dishonor by non-payment is not necessary unless in the meantime the instrument has been accepted.

Where a negotiable instrument has been dishonored it may be protested for non-acceptance or non-payment, as the case may be; but protest is not required except in the case of foreign bills of exchange.

If a foreign bill of exchange is dishonored by non-acceptance it must be duly protested for non-acceptance; and if such a bill has not previously been dishonored by non-acceptance, but is dishonored by non-payment, it must be duly protested for non-payment. Upon failure to properly protest a foreign bill of exchange, the drawer and indorsers are discharged.

The protest must contain a copy of the bill and be annexed thereto, it being necessary that same be under the hand and seal of the notary public making it, and that it specify:

1. The time and place of presentment.

2. The fact that presentment was made and the manner thereof.

3. The cause or reason for protesting the bill.

4. The demand made and the answer given, if any, or the fact that drawee or acceptor could not be found.

It is not necessary to make protest under such circumstances as would dispense with notice of dishonor.

Payment for Honor.

The manner in which a bill of exchange may be accepted *supra* protest has heretofore been indicated. Upon protest of a bill for non-payment, any person may also intervene and pay the same, *supra* protest, for the honor of any person liable thereon. To operate as such, payment for honor *supra* protest must be

attested by a notarial act of honor, which may be appended to the protest or form an extension of it, and must be based on a declaration made by the payer for honor and for whose honor he pays.

In case the holder of a bill of exchange should refuse to receive payment, *supra* protest, he loses his right of recourse against any party who would have been discharged by such payment.

As respects one another, indorsers are liable in the order in which they indorse. Each indorser promises every subsequent holder of the bill or note that they shall suffer no loss by reason of the default of the principal debtor. An indorser, therefore, although responsible for subsequent indorsees, has a remedy against any prior indorser.

Defenses Against Negotiable Instruments.

Such defenses as may be set up in a suit to recover on a bill or note are divisible into two classes: First, those known as absolute defenses; second, those known as personal defenses.

Absolute defenses are those which may be made to the payment of a bill or note, and are good against all the world, and are of three kinds: (A), those based upon the incapacity of the parties to execute a negotiable paper; (B), those based upon the invalidity of the contract in which the bill or note was given, and (C), those based upon the fact that the instrument sued upon has been extinguished in law. A defense based upon any of the above grounds will defeat recovery on a bill or note.

Personal defenses are those good only against the immediate parties to a negotiable instrument, *i. e.*, against those who have actual or constructive notice of their existence.

Defense of Incapacity.

If the party primarily liable to pay a bill of exchange or promissory note is legally incapable of executing a contract, a negotiable instrument issued by such a party is invalid, no matter into whose hands it may happen to come. Illustrations of such incapacity as will invalidate negotiable instruments are infancy, lunacy and extreme intoxication.

Defense of Illegality.

As a general rule, the fact that a bill or note was given for an illegal purpose will not constitute an absolute defense to its payment, but is ordinarily a personal defense. If, however, a statute is passed providing that a certain class of contracts shall

be void, a bill or note given in pursuance of such contract is void in the hands of any holder. For example, wagering contracts are by statute declared illegal, and consequently a bill or note given to settle a bet or wager is void. The purchaser of such a note, no matter how innocent he may have been of its illegality, can recover nothing against the maker.

Defense of Extinguishment.

The fact that a bill or note has been extinguished may always be set up as an absolute defense to its payment. A negotiable instrument may be extinguished in three ways: (1) By cancelation, (2) by alteration, and (3) by release. If the holder of a negotiable instrument cancels it by destroying it, the same is legally extinguished, and thereafter no rights can be obtained under it. However, if the cancelation was accidental, even though the paper itself be lost, the contract is not extinguished. In such an event, as was pointed out heretofore, the holder may recover, even if he is unable to produce the bill or note, provided he gives an acceptable bond of indemnity.

An intentional alteration of a material element of a negotiable instrument by the holder thereof, or by his order, will operate as an extinguishment of the instrument. When we say a "material alteration" we mean such a change in the terms of the bill or note as will affect the rights of the parties. For instance, a change of the date, the rate of interest, amount payable, time of payment, names of the parties, etc., would be material alterations, and would render the instrument void. A material alteration, if made innocently, will not destroy a bill or note, the holder having the right to sue upon the instrument as it was originally drawn, if his act was done in good faith. Alterations made by a stranger are regarded as being immaterial. If all the interested parties on a bill or note consent to an alteration thereof, a new contract is made, and the revised instrument is regarded the same as if a new bill of exchange or promissory note had been drawn.

Extinguishment by Release.

The third means by which a bill or note may be extinguished is by a release or retransfer to the maker or acceptor at or after maturity. If, for example, the holder of a bill or note delivers the same to the acceptor or maker at maturity, upon payment of the amount due, the instrument is extinguished, and if it is again put in circulation the party primarily liable could not be compelled to pay the same a second time.

Personal Defenses.

The defenses discussed above may be made against any one, whether or not he is an innocent purchaser. Let us next consider such defenses as are good only when the party seeking to recover had actual or constructive notice that such defense existed. In other words, if the plaintiff is an innocent purchaser for value, none of the defenses which we will now consider can be made against him. Personal defenses, as previously observed, are not available against a holder in due course. To cite a previous illustration, assume that John Doe sells Richard Roe, a horse warranted to be sound, and in payment therefor receives a promissory note. The horse having turned out to be unsound and worthless, Richard Roe returns the animal and repudiates his bargain, whereupon John Doe sues him upon the note. John Doe could not recover because he had made false representations concerning the horse, and consequently obtained the horse through fraud, which circumstance constituted a good defense on the part of Richard Roe. If, in this illustration, John Doe had transferred the note to Owen Jenkins, the defense of fraud could not be set up by Richard Roe against Owen Jenkins, because there was nothing on the face of the instrument to indicate fraud, and the defense of fraud could only be set up against the party guilty of fraud. It is necessary, however, that Owen Jenkins was ignorant of the fraud at the time he purchased the note, and, furthermore, that he gave value for it.

We note, therefore, that whenever one party has induced another by false representations to execute a bill or note he is guilty of fraud, and cannot recover against him. As fraud is not an absolute defense, any subsequent innocent purchaser could recover on the instrument.

Payment of a bill or note before maturity is a personal defense, but if the same is again put in circulation, and gets into the hands of an innocent purchaser for value prior to the date upon which it becomes due, the holder can recover.

If the execution of a bill or note is obtained through duress *i. e.*, by force or threat of punishment or injury, the injured party has a perfect defense as against the party who is guilty of the act of duress. Duress is, however, but a personal defense, and consequently could not be set up against an innocent purchaser of value.

As between the original parties to a bill or note, absence of consideration is a good defense. Absence of consideration is to be distinguished from failure of consideration. Suppose John Doe sells Richard Roe a farm, in payment for which Richard

Roe gives John Doe his promissory note. It subsequently develops that John Doe had no title to the farm, or, rather, his title turns out to be valueless. In this case the consideration has failed, and such failure of consideration is a good defense to the payment of the note as against any one who is not an innocent purchaser for value.

A negotiable instrument may be discharged:

Discharge of Negotiable Instruments.

The Negotiable Instrument Act provides five means by which a negotiable instrument may be discharged, to wit:

1. By payment in due course by or on behalf of the principal debtor.

2. By payment in due course by the party accommodated, where the instrument is made or accepted for accommodation.

3. By the intentional cancelation thereof by the holder.

4. By any other act which will discharge a simple contract for the payment of money.

5. When the principal debtor becomes the holder of the instrument, at or after maturity, in his own right.

A person who is secondarily liable on the instrument is discharged (1) by an act which would discharge the instrument; (2) by the intentional cancelation of his signature by the holder; (3) by the discharge of a prior party; (4) by a valid tender of payment made by a prior party; (5) by a release of the principal debtor, unless the holder's right of recourse against the party secondarily liable is expressly reserved.

However, an instrument is not discharged upon payment by the party secondarily liable thereon, but the party so paying it is remitted to his former rights as regards all prior parties, and he may strike out his own and all subsequent indorsements and again negotiate the instrument, except.

1. Where it is payable to the order of a third person, and has been paid by the drawer; and

2. Where it was made or accepted for accommodation, and has been paid by the party accommodated.

The law applicable to bills of exchange drawn in a set provides as follows: Where a bill of exchange is drawn in a set, and each part is numbered and contains a reference to the other parts, the whole constitutes one set. If two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is the true owner of the bill as between such holders. If the holder of a set should indorse two or more parts to different parties he becomes liable on every such part, and every indorser subsequent to him is liable on the part he has

himself indorsed, the same as if such parts were separate bills. Acceptance of a bill drawn in a set may be written on any part, but must be written on one part only, for if the drawee accepts more than one part, and such accepted parts are negotiated to different holders, he is liable on every such part the same as if it were a separate bill. Where the acceptor of a bill drawn in a set pays the same, and does not insist on the part bearing his signature being delivered to him, and such part at maturity is outstanding in the hands of a holder in due course, he becomes liable to the holder thereon.

With the exceptions above noted, when any one part of a bill drawn in a set is discharged by payment, the whole bill is also discharged.

Checks.

In reality a check is a species of a bill of exchange, the distinction being that it must be drawn on a bank, is payable on demand, and no acceptance is necessary. The law applicable to bills of exchange, payable on demand, likewise applies to checks.

Unless a check is presented for payment within a reasonable time after its issue the maker will be discharged from liability thereon to the extent of loss caused by delay. For example, if I neglect to demand payment of a check given me in settlement of a debt for a considerable time, and the bank on which the check is drawn should fail, I must suffer the consequences of my own carelessness and cannot hold the maker liable. But if I should simply neglect to deposit a check until after the maker has withdrawn his funds, I can still recover on the check. The safest course is to deposit a check within twenty-four hours after receiving the same.

We observed that in the case of a bill of exchange the drawee was not liable until he first accepts the same. In the case of a check the drawee does not accept at all. Hence the drawee (the bank) is under no liability to pay the check to the holder, a check being merely an order on the bank to pay a certain sum from the funds belonging to the drawer. If the drawer's credit is injured by the bank's refusal to pay a check when the maker had sufficient funds in bank to meet it, the bank may be sued by the maker of the check, but the payee has no right of action against the bank.

Certified Checks.

A check does not operate as an assignment of the funds of the maker to the amount thereof, but if the check is certified there is an assignment of the funds in bank. When a bank cer-

tifies a check its proper officer, either the president or cashier, indorses it "Good" or "Certified," with his signature or stamp, which act is equivalent to an acceptance.

A bank by certifying a check sets aside sufficient funds belonging to the drawer to pay the amount mentioned therein, and the funds become the property of the holder of the certified check. The holder may sue the bank to recover upon refusal to pay a certified check. The drawee is under no further liability after the check has been certified.

Drafts.

The word draft is indiscriminately applied to checks, bills of exchange or to non-negotiable orders for the payment of money. This application of the word is not entirely erroneous, but it is more correctly applied to instruments in the form of bills of exchange that are drawn for the purpose of collecting for the drawer's own use and account sums of money due him from sundry persons. If the drawer procures money on draft before it is paid, it becomes technically a bill of exchange. The payee of the draft is usually the person or institution delegated by the drawer to make the collection, and it is delivered or sent by mail to the payee for that purpose. Banks or express companies usually perform this service, making a small charge therefor. The drawer usually places such drafts with his bank for collection, but in many instances the drawer draws them payable to some bank in the place where the debtor lives, and mails them to such bank with the request that the bank collect and remit this amount, less collection charges.

Bills of lading, which are negotiable, will be considered in connection with the subject of common carriers, to which they more directly appertain.

Conflict of Laws.

Although the law governing negotiable instruments has been made practically uniform throughout the United States, the law differs in many material regards in different jurisdictions. In concluding the subject of negotiable instruments let us briefly summarize the rules regulating cases where the law of one state conflicts with the law of another. Suppose a bill of exchange is drawn in Pennsylvania upon a man living in New Jersey, directing him to pay a sum of money to a party living in Delaware. The payee negotiates the instrument in New York and the parties when a dispute arose lived in Maryland.

The law of the place where the contract was made—in our

illustration Pennsylvania—will govern all questions regarding the making of the contract; in other words, the law of Pennsylvania would determine whether the bill was drawn up properly and was negotiable. The law of New Jersey, which in our illustration is the place where the contract was to be performed, would govern the liability of the maker of the note or the acceptor of the bill, and would also determine whether days of grace should be allowed, and also whether the bill should be protested for dishonor. The law of New York where the bill was negotiated, would govern the question whether or not a proper transfer had been made and legal title vested in the present holder. Lastly, the law of Maryland, the state wherein suit was brought, will govern all questions of evidence and all questions covering the Statutes of Limitations; in other words, the law of Maryland will regulate the time within which suit must be brought, and the admissibility of evidence produced in such suit and necessary to sustain the same.

COMMERCIAL FORM OF A PROMISSORY NOTE

$100 *Philadelphia,* , *19* .

Ninety days after date, I promise to pay to the order of William Burns one hundred dollars, without defalcation, for value received.

JOHN JONES.

FORM OF INDORSEMENT

Pay to the order of James Brown.

WILLIAM BURNS.

JUDGMENT NOTE WAIVING EXEMPTION, STAY OF EXECUTION, ETC.

$250 , *19* ,

One day after date, I promise to pay to James Robinson, or his assigns, two hundred and fifty dollars, without defalcation, value received, with interest.

And further, I do hereby authorize and empower any attorney of any court of record of Pennsylvania, or elsewhere, to appear for and to enter judgment against me for the above sum, with or without defalcation, with costs of suit, release of errors, without stay of execution, and with ten per cent added for collection fees; and I also

waive the right of inquisition on any real estate that may be levied upon to collect this note, and do hereby voluntarily condemn the same, and authorize the prothonotary to enter upon the fiere facias *my said voluntary condemnation, and I further agree that said real estate may be sold on a* fiere facias, *and I hereby waive and release all relief from any and all appraisement, stay, or exemption laws of any state, now in force, or hereafter to be passed.*

Witness:

JAMES THOMPSON. PETER BROWN [L. S.]

NOTE.—The above form is used in Pennsylvania and is good in most states. Some states, however, have local laws which provide for special forms.

PROTEST OF A PROMISSORY NOTE OR CHECK FOR NON-PAYMENT

United States of America

(Here insert copy of the Promissory Note, with the names of the endorsers appended to said copy.)

BE IT KNOWN, *That on the day of the date hereof, at the request of G. H., the holder of the original promissory note, of which a true copy is above written, I, the undersigned, a notary public for the Commonwealth of Pennsylvania, by lawful authority duly commissioned and sworn, residing in , during the usual hours of business for such purposes, presented the same at the place of business* (or residence, if the party be not engaged in business) *of C. D., the promisor, to the said C. D.* (or to a proper person in attendance, or as the case may), *and demanded payment thereof, (the time limited therein having lapsed), to which he answered, "I cannot pay this note"* (or as the case may be, inserting as nearly as possible the words of the reply), *or words to that effect.*

WHEREUPON, *I, the said notary, at the request aforesaid, have protested, and do hereby solemnly protest, against all persons and every party concerned therein, whether as maker, drawer, drawee, acceptor, payor, endorser, guarantor, surety, or otherwise, howsoever, against whom it is proper to protest for all exchange, re-exchange, costs, charges, damages, and interest, suffered and to be suffered by reason or in consequence of the non-payment of said note; of which demand, refusal and protest I duly notified the said and* (specifying manner of notice).

Thus done and protested at aforesaid, the day of A. D. 19 .

[*Seal*]

J. K.
Notary Public.

FORM OF NOTICE TO ENDORSER, OF PROTEST FOR NON-PAYMENT OF A PROMISSORY NOTE OR CHECK

Philadelphia, , *19* .

Payment of A. B.'s note (or check), *in favor of C. D., and by you endorsed, dated* , *19* , *for* *dollars, delivered to me for protest by E. F., the holder* (or E. F. & Co., the holders), *being this day due, demanded, and refused, it has been by me duly protested accordingly, and you will be looked to for payment; of which you hereby have notice.*

J. K.,
Notary Public.
No. , *Street, Philadelphia.*

To G. H.

COLLATERAL NOTE

$ *19*

Promse to pay to the order of

Dollars,

without defalcation, for value received *and have deposited herewith*

as collateral security for the prompt payment at maturity, of this and any other liabilities of the undersigned, due or to become due, or that may be hereafter contracted with the holder of this note; which collaterals, either the whole or any part thereof *hereby authorize and empower the holder of this Note should the same or any other liability of the undersigned as above described, be not paid at maturity, to sell at public or private sale at any time or times thereafter, without further notice and with the right of becoming the purchaser at such sale or sales, of the whole or any part of said collaterals, freed and discharged of any equity of redemption, and to transfer, assign and deliver the same; and after deducting all legal and other costs, attorney fees and expenses of collection, sale and delivery, to apply the residue of the proceeds of such sale or sales, to pay any, either or all of said liabilities as said holder shall deem proper, returning the overplus, if any, to* *and should any deficiency occur* *further promise and agree to pay the holder hereof on demand.*

Payable at

Due

REAL ESTATE AND CONVEYANCING

Definition — Land — Tenements — Hereditaments — Landlord and Tenant—Leases—Distress—Recovery of Possession—Forcible Entry and Detainer—Mining Leases—Fees—Dower—Mortgages—Remainders and Reversions—Intestate Act 1833—Title by Purchase—Deeds—Title by Matter of Record.

IT already has been pointed out that law was divided into two main divisions—(1) the law applicable to personal rights and wrongs, and (2) the law governing property, property being of two varieties, personal property and real property.

Originally, the crudest division of property was into things movable and things immovable. Land is immovable, and every other species of property is movable except such as is fastened or attached to land. The term "real" property or real estate, as referable to things immovable, was developed later, about the beginning of the seventeenth century, and arose from the nature of the legal action taken to redress injury to this class of property. A study of the law of real estate involves the primary inquiry into what the term "real estate" comprises; we will then be in a better position to consider "Conveyancing," or the means whereby an estate in real property may be transferred or conveyed.

An estate is an interest in a thing, as distinguished from the thing itself; and real estate is, literally speaking, an interest (estate) in a real thing, the term "real," in its technical sense, applying to property of a permanent, fixed and immovable nature.

Following in brief the classification employed by Blackstone, things real comprise lands, tenements and hereditaments.

The term "land" has a very wide meaning legally, comprehending any ground, soil or earth, and also water. Suppose, for example, I seek to obtain title to a certain tract of land upon which is located a large body of water. Such property must be referred to as so much land covered with water. Water being a movable substance, the owner of the land underlying the water has only a temporary or usufructuary property therein, which will be better understood when we consider the rights of riparian owners. Land also in its legal signification extends indefinitely upward and downward. Therefore, no man can erect a building upon my land, or which would overhang my land, without my consent. Furthermore, the owner of the surface of the earth owns everything beneath his boundaries to the center thereof, as is everyday experience in the mining regions of this country.

Hence by the use of the word "land" in a grant, everything terrestrial will pass.

In view of the development of aeronautics, the law has been modified to the effect that the right of property in the air space rests in the owner of the surface, at least to the point to which he can utilize it.*

The term "tenement" has a still wider meaning than the term "land," and, although it is commonly applied to houses and other buildings, legally it means everything of a permanent nature that can be held, including property which is perceptible to the senses, such as lands and merchandise, as well as property or estates of an imperceptible nature, such as rights of way through the property of another and other rights and interests which arise out of, or are in any degree connected with, or exercisable within land or real estate.

The term "hereditament" has the broadest meaning of all, including not only lands and tenements, but also whatever may be inherited, whether it be corporeal (rights which are visible) or incorporeal (rights which are invisible), real, personal or mixed.

We,therefore, observe that real estate consists in such interest as a man may have in things real; viz., lands, tenements and hereditaments, and the law of real estate is the science which ascertains and defines the rights and obligations of men in their relations to each other in respect to land.

Before entering into a more detailed discussion of the law of real estate, it is necessary to note certain further distinctions between real and personal property, which is important (1) because of the difference in devolution, (2) because of the difference in liability for debts, and (3) because of the conversion of realty into personalty and personalty into realty which results from the operation of certain equitable doctrines.

Upon the death of the owner of real estate the same passes to his heirs-at-law, whereas title to the personal property of which a decedent dies possessed passes to his executor or administrator.

The law governing executions provides that both in life and after death the personal property of a man is primarily liable for

* A uniform state law for aeronautics has recently been recommended by the American Bar Association and up to 1931 has been adopted by nineteen states. It provides in substance that ownership of the space above the lands and waters is vested in the several owners of the surface beneath, subject to the right of flight, and that flight in aircraft over lands or waters is lawful, unless at such a low altitude as to interfere with the existing use to which the land or water is put by the owner, unless such flight be so conducted as to be imminently dangerous to persons or property lawfully on the land or water beneath. The landing of an aircraft on the lands or waters of another, without his consent, is unlawful, except in the case of a forced landing. The owner or lessee of the aircraft compelled to make a forced landing shall be responsible for any damage caused thereby.

his debts. In other words, his real estate cannot be sold until it is first shown that his personal property is insufficient to pay his indebtedness.

Real estate may be converted into personal property, as, for example, when a man in his will directs that his real estate shall be sold and the proceeds divided in a certain manner. In such event the real estate is to all legal purposes regarded as personal property. We also noted in our study of partnerships that land or real estate owned by a partnership is regarded as personal property. There are many other conditions under which real estate is converted into personal property, which we will discuss more at length later.

Vice versa, personal property may likewise be converted into real estate. Fragments of a dwelling house, blown down by a hurricane, although in their changed state partaking of the nature of personal property, are regarded as real estate. A key to a lock fastened upon a door is also considered as realty. Where in a will money is directed to be invested in real estate it becomes real estate upon the death of decedent

Composite Character of Same Property.

Again, property may at the same time partake of the nature of real estate and personalty. For illustration, a factory owned by a corporation is in reality real estate, but, as constituting a part of the property owned and represented in the form of stock by the members of the corporation, the same is personal property. Growing crops are personal property, but if the land is sold they pass as part of the real estate.

The owner of land, through or by which a stream of water runs, has the right to receive the flow of the water in its natural or accustomed channel, "without diminution in quantity or deterioration in quality" to any substantial extent. Any right which confers the privilege of interfering with this natural flow is an easement.

If water constitute a swamp or percolates through the soil and flows in no regular channel, the owner of the land may draw the water from the swamp or divert the percolation.

Lateral Support.

The third kind of easement mentioned is that of lateral support, which is the right of every landowner to have his soil supported laterally, in its natural state, by the adjoining land. But this natural right does not extend to any buildings or artificial structures which may be erected on the land. In making excava-

tions for building purposes, one must take precautions not to disturb the natural condition of the adjoining land, and while the adjoining landowner is not entitled to the right to have his buildings also held up, yet most courts will enforce upon the one making excavation a duty to notify the owner of the adjacent land of the proposed digging so he may have an opportunity to protect his buildings.

Drain and Drip.

It is a well-established rule of law that no action can be maintained for unavoidable damage to another's land in the lawful use of one's own land. No man, however, has the right to drain the water from his own land upon the land of another except through natural channels.

It is very common in towns and cities to receive or drain off water through pipes laid on another's land. But the right of drip, which is the right to discharge rainwater from the eaves or gutters upon the land of another, is not so common.

Burial Lots and Pews.

The owner of a burial lot in a cemetery enjoys only an easement, which is the right of interment in the cemetery. The purchaser of a cemetery lot buys the same with the understanding that a change of circumstances may necessitate a change of location. He does not purchase the ground outright. Similarly the owner of a pew in a church has only an easement, for if the church is destroyed by fire or otherwise, the pew-owner's right is gone.

Every easement must originate by grant or agreement, either express or implied. Where an easement has existed for twenty-one years and over, a grant is implied. Such an easement is termed prescriptive. An easement by express grant is created by expressly reserving the same in a deed.

Easements may be extinguished by a release, abandonment, merger or cessation of the purpose or necessity of the easement.

The last and most important class of incorporeal hereditaments is rents. Rent may be defined to be a periodical and certain profit issuing out of lands and tenements. The three species of rents existing at common law are practically obsolete, and the rents which we will consider are (1) ground rents and (2) ordinary rents incident to the relation of landlord and tenant.

Ground Rents.

A ground rent is a certain sum of money which the grantor of land reserves to himself and his heirs, to be paid at regular

periods out of the land conveyed. Ground rents are real estate, and pass to the heir; they may be mortgaged and are bound by a judgment, but are not liable for any part of the taxes assessed upon the owner of the land out of which the rent issues. Formerly, if there were no clause of redemption in the deed creating the ground rent, such ground rent would be irredeemable. By statute in most states irredeemable ground rents cannot be created.

If the owner of the ground rent should obtain title to the land out of which it issues the rent is extinguished by merger. Ground rents may also be extinguished by release. Should the ground rent be in arrears the owner may recover same by distress proceedings or by an ordinary action in assumpsit (debt). The right of exemption is usually waived in a ground rent deed, but if not may be claimed.

Rent.

The next species of rent which we shall consider, and by far the most important, is the ordinary rent incident to the relation of landlord and tenant. Such rent had its origin in the rent service of feudal times. In the Middle Ages a man was required to render to his lord a certain amount of military service in payment for the use of such land as was allotted him. When military service was no longer required, the owner of the land substituted the payment of money in lieu thereof.

Today such rent is reserved to the owner of lands and buildings under the form of a lease, which may be either written or oral. The Statutes of Frauds, varying in minor details in different states, regulate what kind of leases must be in writing. Frequently an agreement is entered into for a lease preparatory to executing one. In such case the agreement should be specific as to the details to be included in the lease. If the agreement for a lease is made orally, and the tenant is given possession of the premises and makes improvements thereon in view of such agreement, a court of equity will compel the execution of the lease agreed upon. The premises should be carefully examined before execution of a lease.

Definition of a Lease.

A lease is a contract for the possession of lands and tenements in consideration of the payment or rental therefor. In every lease there must be a lessor able to grant the land, a lessee capable of accepting the grant, and property capable of being granted. The rent payable under a lease may be in money, services or in any stipulated article, such as grain or ore.

Implied Lease.

If a tenant remains in possession of the demised premises after the expiration of the term of the lease, and pays rent, the law will imply that the lease has been renewed for another term (usually from year to year) subject to the same rent and other agreements contained in the original lease.

In many instances the owner of property places the renting thereof in the hands of an agent. A lease by an agent should be in the following form: "John Doe by Richard Roe, agent." Unless an agent discloses the fact of his agency he becomes personally liable. A lease signed by one partner for property used by the partnership, inures to the benefit of the firm, and is as much a partnership transaction as a sale of partnership goods by a partner would be; a partner taking a lease in his own name holds the property in trust for the firm.

A lease signed by a minor is not void, but may be voided when the minor reaches majority. If a minor holds possession of leased property after becoming of age, he is liable for past and future rent under a lease made during minority. A married woman may, by act of assembly, lease her real estate, and make any contract in writing or otherwise which may be necessary to the enjoyment of her right to lease. A married woman may also become a lessee of real estate.

If property is leased to a corporation it is advisable to see that the board of directors have authorized the lease. It is not necessary for a corporation to affix its corporate seal to a lease, and use by a corporation of leased premises is a ratification of the lease by its officer or agent.

An executor or administrator has no power to lease real estate, but a trustee may lawfully do so.

It is not necessary in a lease to describe the premises demised with the same particularity as in a deed.

It is sufficient to describe the property in a general way, and it is best to give the street number, if any. If not, the description should be sufficiently specific to comply with the law regarding ejectments, of which more hereafter. It is no defense to the payment of rent that the premises are described as being located on the wrong corner.

The duration of the lease should always be set forth therein. If a tenant rents by the month he has the right to terminate the lease at the end of the month. In computing the term of a lease, the first day is included, and the last day excluded. For example, if property is leased for one year from the first day of April, the lease would expire on the last day of the following March.

The date upon which rent is payable should be clearly set forth in the lease. If no time for the payment of rent is mentioned, it is payable at the end of the term.

If the landlord sells leased property, the rent falling due after date of sale is payable to the purchaser. A tenant who has assigned his lease, even with the landlord's consent, remains liable to pay rent unless the landlord expressly releases him from such obligation. If rent is due and unpaid at the date of the landlord's death, it is payable to his executors, but if the landlord dies before the rent becomes due, it is payable to the heir of the landlord.

If leased premises are wholly destroyed by fire the tenant is, nevertheless, liable to pay rent for the balance of his term, and the landlord is not obliged to rebuild. This rule may seem unjust, but it is the law. To protect himself a tenant should provide in the lease against such a contingency.

Repairs.

Unless so provided in the lease, the landlord is not liable to repair the leased premises. It is usual in a lease to provide that the landlord shall make only repairs of a permanent nature, such as putting on a new roof, etc., and that the tenant shall make all tenantable repairs, such as putting in windows or doors, repairing fences, keeping the premises wind or water-tight to prevent waste and decay. Under a covenant in a lease to make repairs a tenant is not bound to repair injuries caused by what are called "Acts of God" (cyclones, etc.), or of a public enemy.

It is policy as a matter of protection for a landlord to stipulate in a lease that it shall not be assigned without his consent. An assignment by act of law, such as in bankruptcy, execution upon a judgment, etc., is not a breach of covenant not to assign. To avoid such a result, leases frequently have a provision against involuntary assignments, for illustration—"nor shall the lessee assign the term hereby granted, or underlet the premises, without the written consent of the lessor indorsed thereon, an assignment within the meaning of this lease being understood and intended to comprehend not only the voluntary action of the lessee, but also every levy or sale on execution or other legal process, and every assignment or sale in bankruptcy or insolvency, or under any other compulsory procedure or order of court."

Re-Entry.

A landlord has the right to forfeit the lease and re-enter the premises upon default of the tenant in payment of rent or default of any of his agreements. Formal demand must first be made.

It is a settled rule of law that a tenant cannot dispute the title of his landlord, and, if he do so, the landlord may elect to annul the lease.

It is advisable to have the signature to a lease properly witnessed.

Sometimes a landlord requires a tenant to furnish security for the payment of rent, and when a third party covenants to be responsible for the performance of the terms and conditions of the lease on the part of the lessee, such surety becomes responsible immediately upon the default of the tenant to pay his rent. If the parties to the lease materially alter its terms the surety is released from all liability.

Sub-Leasing.

There is an important distinction between an assignment of a lease and underletting. An assignment of a lease is where the whole term is transferred by the tenant. An underletting is where a tenant transfers less than his whole term. Every underlessee becomes tenant to the lessee who grants the underlease, and not tenant to the original lessor. In the absence of any provision in the lease to the contrary, a tenant may either assign or sublet, and, as we observed above, a covenant not to assign is not broken by an underletting. As long as he holds the lease, an assignor is personally liable for the payment of rent to the original landlord.

Upon the death of a tenant a lease will vest in his executors or administrators as personal property, and if the executors or administrators take possession of the premises they become liable as assignees.

If a tenant during the term of his lease makes an assignment for the benefit of creditors, the trustees under such an assignment may make such use of the lease as may be beneficial to the creditors.

In the following states leases for a term of more than one year must be in writing, otherwise they take effect only as tenancies at will, even as between the parties thereto: Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New York, North Dakota, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, Wyoming.

In Maryland, New Jersey, North Carolina, Ohio, and Pennsylvania, leases for more than three years must be in writing.

In Washington, leases for more than one month must be in writing.

In Indiana, Minnesota, New York and Tennessee, leases for more than three years must be recorded.

In Kentucky, Virginia, and West Virginia, leases for more than five years must be recorded.

In Maine, Maryland, Massachusetts and New Hampshire, leases for more than seven years must be recorded.

In Pennsylvania, leases for more than twenty-one years must be recorded.

In North and South Dakota, leases of agricultural land are limited to ten years, and leases of city lots to twenty years.

In New Mexico, Utah, Vermont, Washington and Wyoming, leases must be executed and recorded in the same manner as deeds.

Recovery of Possession for Non-Payment of Rent.

A landlord is given the right to recover possession of the leased property for non-payment of rent. If the tenant shall refuse to pay rent as provided in the lease, and there are not sufficient goods upon the premises to pay the rent in arrear, except such articles as are exempt from levy and sale by law, the landlord may give the tenant notice to vacate the premises; the length of the required notice being regulated by local statute—a longer notice being ordinarily necessary in the winter months than in the summer months. If the tenant refuses to vacate and deliver up the premises according to said notice, the landlord may make complaint, under oath, before a justice of the peace or magistrate, and upon averment of the above facts the tenant may be summoned to appear, at a fixed date after service of a summons, for the purpose of answering the landlord's complaint. The justice of the peace or magistrate shall then hear the case, and if it appear that the landlord's complaint is just and true, judgment is entered against the tenant that the premises be delivered up to the landlord, and, at the request of the landlord, a writ of possession may be issued, directed to a constable, commanding him to deliver possession of the premises to the landlord and levy costs on the tenant (defendant). The tenant may at any time before the writ of possession is executed pay the constable the

rent due and in arrear, with costs, and thus retain possession of the premises. The writ of possession cannot be issued until after the judgment is entered.

If a tenant remove without leaving sufficient property on the premises to secure the payment of at least three months' rent, or shall refuse to give security for the payment thereof after demand is made for such security, and shall refuse to deliver up possession of said premises, the landlord may, upon making affidavit of the facts before a magistrate or justice of the peace, have the tenant summoned to appear, at a fixed time after service of said summons, and answer his complaint. Upon proof of the facts by the landlord, judgment will be entered in his favor and a writ of possession may be issued directing a constable to deliver over the premises to the landlord.

The landlord's remedy to recover rent or possession varies as to time limits in different states, but essentially the remedy is the same universally throughout the United States. A subtenant is entitled to the right of tendering security for rent.

The most effective remedy provided by law for the protection of a landlord is the right of distress, which right has been inseparably connected with the ordinary relation of landlord and tenant since the feudal ages.

Distraints for rent are regulated by statute, which provide substantially as follows: A landlord having any rent in arrear or due upon any lease, may distrain upon the goods located on the leased premises provided such distress be made during the continuance of the lessor's title or interest. Although a landlord may personally distrain without the intervention of a constable (a constable not being required until the inventory and appraisement shall be made), it is advisable to have a constable to attend to the matter from the beginning, so as to have the benefit of his knowledge and experience. A correct statement of the rent due should be handed to a constable, together with a warrant authorizing him to distrain. In distraining for rent, interest should not be added to the rent.

Goods Liable to Distress.

A tenant's cattle or stock feeding or depasturing upon all or any part of the leased premises, all sorts of corn, grass, hops, roots, fruits, pulse or other product whatsoever, which may be growing on any part of the premises, may be taken and seized as a distress for arrears of rent, and after the same have been appraised, they may be sold in satisfaction of the rent in arrear, and costs of distress proceedings. The law fur-

ther provides that the purchaser of such corn, etc., shall have free egress and regress to and from the same where growing, to repair the fences from time to time, and when ripe, to cut, gather up and carry away the same, in the same manner as the tenant might legally have done had such distress never been made.

With the exceptions hereinafter noted, all goods located on the leased premises may be levied upon under a distraint proceeding for the collection of rent. The goods of a stranger on the premises and those of a sub-tenant are liable; also goods on storage not with a warehouseman, and goods of a mere renter of rooms. Such fixtures as are slightly attached to the premises, and which a tenant might remove at his pleasure, would also be subject to a landlord's levy.

Goods Privileged from Distress.

Unless a tenant in his lease has waived his right to claim the benefit of the Exemption Law, he is entitled to claim same. See Abstract of Exemption Laws at end of Chapter on Contracts.

Furthermore, if property is placed in the possession of a tenant by those with whom he deals in business, such property is not liable to distress for rent. To illustrate, goods on storage with a warehouseman, the property of a guest at a hotel, the goods of a boarder, grain sent to a mill, cloth in a tailor's shop, and goods on a wharf.

It is necessary, however, that the owner of any personal property, exempted by law, or his or their agent, or the person so leasing or hiring the same, shall give notice to the landlord or his agent that such property is leased or hired. The notice required should be given to the landlord when the instrument is delivered to the tenant or before the right of distress has accrued.

Proceedings on a Distraint.

When a landlord has distrained upon the goods contained on leased premises the tenant or owner of the goods distrained upon must, within five days after such distress and notice thereof, replevy the same with sufficient security according to law. After distress, notice thereof, and the expiration of said five days, the landlord must have the goods distrained upon appraised by two appraisers. He may then, after six days' public notice, sell the goods and chattels so distrained at the highest figure that can be obtained therefor.

Penalties for Illegal Distress.

It sometimes happens that a landlord will distrain upon a tenant's goods when no rent is in arrear or for more rent than is actually due.

The law provides that if a landlord distrains and sells a tenant's goods when it shall be proven that no rent is in arrear, the tenant may by action of trespass recover double the value of the goods or chattels so distrained and sold, together with the full costs of suit.

The rent must be certain or that which can be made certain, and if a landlord distrains for more rent than is due he renders himself liable therefor.

The law has a high regard for the sanctity of a man's home, and a landlord in making a distraint for rent is not allowed to break open an outer door to a residence or break open or tear down gates or inclosures for that purpose; but if a door or window is open, the landlord may enter, and when once in may break open inner doors.

If, after having made the distraint, he is refused admission, the landlord may for the purpose of proceeding with the distraint, break open an outer door, but must avoid, in so doing, a breach of the peace. If the leased property is used for business purposes, where everyone having business to transact is invited to enter by lifting a latch during business hours, a landlord or constable may enter and make a levy or distraint. In the case of a dwelling house no right is given to raise a latch on a closed door, as this act, in the eyes of the law, is as much a breaking as would result from forcing a door bolted with iron.

The landlord or constable upon entering the premises makes a seizure of such goods and chattels as are liable for rent, of which an inventory is made. No actual seizure is required, it being sufficient if notice is given of the claim for rent, and the tenant forbidden to remove the same from the premises until the rent is paid.

If, after goods have been distrained, they are removed from the premises, the guilty party is liable to pay treble damages and costs of suit to the injured party. It is prudent to place a watchman in charge of goods distrained upon to prevent their removal. A landlord should also exercise care not to distrain on more goods than are necessary to satisfy his claim for rent and costs, but he is not liable for a slight excess or error in judgment.

Tender of Rent.

If a tenant, upon receiving a notice of the distress with a copy of the inventory, decides to pay his rent, and stop further

proceedings, he must observe the law regulating a legal tender of money. The tenant must produce and offer the entire amount due in money, either gold coin or legal tender notes, to the landlord or his agent authorized to receive payment of the same. It should be borne in mind that bank notes are not a good legal tender, and silver coins less than a dollar are not legal tender for debts in excess of ten dollars. United States gold coins and notes are legal tender. The offer must be without qualification or condition. These observations should be followed to make legal a tender of money under any circumstances.

The tenant's goods should not be sold *en masse*, but separately or in parcels, so as to obtain the best price in order to protect the tenant against a sacrifice of values.

We referred above to the provisions of the exemption law, which exempted from sale on an execution of any kind the debtor's goods or property to an amount fixed by local statute. This beneficent statute cannot be claimed by a sub-tenant who occupies part of the premises in violation of a lease not to sub-let without the consent of the landlord. It is also very important to note that a corporation or partnership cannot claim the benefit of the exemption law, as this is altogether a personal privilege. A claim for exemption should be made before the sale, and preferably before the advertisement of the sale is posted.

Distraint of Goods Fraudulently Removed.

Sometimes a tenant whose rent is in arrears will remove without notice to his landlord. Almost all states have passed laws providing that if a tenant fraudulently removes his goods from the leased premises with intent to prevent a distraint, the landlord may, within a certain number of days (usually thirty days) after the goods are removed, follow the same and take and seize such goods wherever they may be found, as a distress for rent in arrears, provided that the goods have not been sold *bona fide* and for a valuable consideration before they are taken by the landlord. If the goods are removed in the night time, this fact is in itself sufficient evidence of fraud. Should a tenant remove his goods in the day time, his rent being in arrear, this would not be fraudulent, as a tenant is not bound to give notice to the landlord that he is going to remove his goods.

Any goods of a stranger upon the leased premises may be removed any time before levy, and a landlord has no legal right to follow a stranger's goods.

Besides the various remedies which we have already indicated, a landlord may sue his tenant for non-payment of rent in

an ordinary action of assumpsit. If the amount of rent claimed is less than one hundred dollars, suit is brought before a magistrate or justice of the peace.

Justices of the peace generally throughout the country have jurisdiction of claims under three hundred dollars.

Recovery of Rent in Miscellaneous Cases.

Upon the death of a tenant the landlord's right to distrain ceases. Rent for the period of one year is included in the second class of debts to be first paid out of a decedent's estate. A landlord's claim for rent is not required to be paid until the expiration of a year after letters of administration have been taken out.

Upon the bankruptcy of a tenant, a landlord is permitted to prove a claim for such rent as was actually due at the date the petition in bankruptcy was filed.

Tenant's Liability for Taxes.

It is usually provided that the receiver of taxes may distrain and levy upon all and sell any goods, chattels or personal property found on any premises on which taxes are delinquent. When the goods, chattels or personal property of any tenant is levied upon, the receiver of taxes is authorized to proceed with due diligence to collect the same from said tenant to the amount of rent then payable to the owner of the premises. The amount collected by said receiver of taxes shall be a lawful deduction from the rent due, and in the event of the refusal of any landlord to allow of said deduction to said tenant on account of rent, then it shall be the duty of the city solicitor to defend the said tenant in any action brought by the landlord for the recovery of rent due from said tenant. It is further provided by the above act that a tenant shall in no case be liable to pay the said taxes, costs and charges until the rent shall have become due and payable, and the receiver of taxes cannot follow the tenant's goods if same are removed to a different address.

Mechanics' Liens.

The property of a landlord is not liable to liens for repairs, alterations or additions made by a tenant, without the written consent of the landlord or his agent, and notice must be given the landlord or his agent at the time materials are furnished, or work done, of the intention to file a lien.

Surrender.

If a tenant, before the expiration of his lease, decides to remove, and upon paying rent to date of removal notifies his landlord of his intention and hands over the keys to the premises, the landlord may accept the surrender, and if he do so, he cannot thereafter maintain any claim for rent for the balance of the term. It has been held that if a landlord or his agent accept the keys to the leased premises without comment, such silence is an acquiescence in the surrender. If a tenant surrenders possession of the premises to the landlord, the latter must declare his intention of holding the tenant responsible for future rent, if such is his purpose.

Recovery of Possession at Expiration of Term.

If premises have been leased for a fixed or definite term, and the tenant holds over after the expiration thereof, a landlord may give the tenant notice to vacate. If the tenant should refuse to deliver possession the landlord may bring suit, and upon proving his ownership of the premises, the leasing thereof, and that the tenant refuses to deliver possession after notice, may obtain judgment upon which a warrant will issue directing a constable to deliver possession of the premises to the landlord. Notice to remove before the expiration of the term is unnecessary unless provided in the lease. But if the premises have been leased from year to year or at will, a landlord to recover possession must give the tenant notice to vacate at the expiration of the lease. The notice to quit must be given a specified time before the end of the term, and must be to quit at the termination of the lease, and not at some other date.

If a lease is from month to month, thirty days' notice to vacate is ordinarily required before proceedings may be begun to dispossess the tenant.

Unless the lease requires it, a tenant is not bound to give any notice that he intends to remove, but practically every lease requires that the tenant give notice. A verbal notice by either party is sufficient, but it is advisable to give the notice in writing.

Any interference with the tenant's beneficial enjoyment of the demised premises constitutes an eviction at law on the part of the landlord, and the tenant would thereafter be relieved from liability to pay rent. So zealously does the law guard a tenant's rights in this regard that even when the premises have been destroyed by fire an entry by the landlord for the purpose of rebuilding without the consent of the tenant will amount to an eviction. An eviction will not discharge rent due prior to such

eviction, but only that accruing subsequent thereto. If, however, a tenant, subsequent to an eviction, continues to pay rent without setting up the eviction as a defense, such fact would be construed as a waiver of his rights.

Forcible Entry and Detainer.

The law regulating forcible entry and detainer has a very important place in considering the rights and remedies of landlords and tenants. All the states have made forcible entry on another's property a crime. The Pennsylvania statute provides that "if any person shall, with violence and a strong hand, enter upon or into any lands or buildings, either by breaking open doors, windows or other parts of the house, or by any kind of violence or other circumstances of terror, or if any person, after entering peaceably, shall turn out by force or by threats or menacing conduct the party in possession, every person so offending shall be guilty of a forcible entry, and on conviction shall be sentenced to pay a fine not exceeding five hundred dollars or undergo an imprisonment not exceeding one year, or both or either at the discretion of the court, and to make restitution of the lands and tenements entered as aforesaid." To constitute the crime of a forcible entry the force used must exceed the force of a mere trespass; the circumstances must be such as would excite terror and result in a breach of the peace, such as violence offered to the person, having unusual offensive weapons, of being attended by a multitude of people, etc.

The law also protects the landlord from anyone's forcibly taking and holding possession of his property, and makes this act a crime. The Pennsylvania statute covering this act provides: "If any person shall, by force and with a strong hand, or by menaces or threats, unlawfully hold and keep possession of any lands or tenements, whether the possession of the same were obtained peaceably or otherwise, such person shall be guilty of forcible detainer, and upon conviction thereof shall be sentenced to pay a fine not exceeding five hundred dollars or to undergo an imprisonment not exceeding one year, or both, or either, at the discretion of the court, and to make restitution of the lands and tenements unlawfully detained as aforesaid; provided that no person shall be guilty of forcible detainer if such person, by himself, or by those under whom he claims, has been in peaceable possession for three years next immediately preceding such alleged forcible detention."

The same circumstances of violence pointed out in connec-

tion with forcible entry are applicable to forcible detainer. In other words, the landlord in taking possession, and the tenant in keeping possession, must not be guilty of acts constituting a breach of the peace, as any acts of violence would subject the guilty party to prosecution.

It must be borne in mind that a tenant who holds over after the expiration of his term is not a trespasser, but he has a clear right to maintain possession of the demised premises until he receives notice to quit.

Negligence as to Leased Property.

A builder who erects a building for the purpose of renting the same is required to exercise care and skill in its erection, regard being had to the purpose for which it is designed. Should a landlord, for example, lease a house unfitted for the purpose of a tenant, as for heavy storage, he will be liable for damages, unless he forbid such use in the lease.

If a landlord has taken due precaution to erect and maintain a safe building, he is not liable for defects of which he had no knowledge or reason to believe existed.

If the premises are in good repair when rented, the tenant is liable to any one injured in or about the premises as a result of the tenant's failure to repair. To illustrate, if there is an opening in the sidewalk of leased premises, which opening is covered by a grate, one of the bars of which has been broken during the term, the tenant, and not the landlord, is liable for injuries sustained by a person falling down said opening. If a tenant should allow the leased premises to go to ruin on account of failure to make tenantable repairs, or if he would wilfully injure the premises, he is guilty of waste, and the landlord may apply to the court to restrain the tenant from committing waste.

Liability to Repair Sidewalk.

The owner of property along a street is required to keep the sidewalk in front of his property in proper repair, and upon failure to do so, such owner would be liable for any injury resulting therefrom.

Mining Leases.

In view of the extensive mineral interests of Pennsylvania, West Virginia and certain Western states, the subject of leases could not properly be concluded without a few brief observations concerning leases of mining property.

Land is frequently leased for the purpose of obtaining coal,

oil, gas, etc., therefrom, the lessee being required to do the mining or drilling, as the case may be, and to pay to the landlord, in the nature of rent, a certain proportion of the products taken from the land, called royalties. It is customary to make such leases for a term of years, or as long as minerals may be taken from the land in paying quantities. A right to dig for minerals is distinct from a right to the soil. It is very common in every part of the country where coal and iron is to be found to give rights to mine below the surface of the ground separated from a right to the surface. Such a grant confers in reality a mere license to take and appropriate the minerals beneath the surface and no property vests in the lessee until they are taken and appropriated by him.

It is well-settled law that a lease giving the right to take out all the coal beneath a certain surface also confers the right to make all necessary openings to reach the coal. In other words, when anything is granted all the means to obtain it are granted.

The grant of oil and gas privileges cannot be of oil and gas in place, as in the case of a grant of coal, iron and other minerals.

When land is leased for the purpose of drilling and operating for oil and gas, the lessee's right is in the nature of an easement of entry and examination, with a right of possession arising where the particular place of operation is selected for egress, storage, transportation, etc., during the continuance of operations. The actual subject of possession to which an oil lessee is entitled is in the oil and gas contained in the land. Where there is a lease of the exclusive right to operate for oil for the term of ten years, such a grant is not a sale of the oil, but only the exclusive right to operate for it during a definite term.

If the consideration of a mining lease is the payment on the part of the lessee of a minimum royalty for a limited number of years the fact that the coal is exhausted sooner than was anticipated will not relieve the lessee from liability to pay the minimum royalty agreed upon.

A party opening a coal mine in the ordinary and usual manner may, upon his own lands, drain or pump the water which percolates into his mine into a stream which forms the natural drainage of the basin in which the mine is located, even though the quantity of water is increased thereby and the quality so affected as to render it totally unfit for domestic purpose by the lower riparian owners.

A manufacturer of coke from coal purchased by him from another mine owner must be careful that the smoke and vapors emitted from his ovens shall not substantially injure the crops

and soil of an adjoining farm, for which injury he would be liable in damages.

Directions in Renting Property.

In concluding the subject of Landlord and Tenant, it will be instructive to consider a few precautions which should be carefully observed in leasing a property.

In the first place the premises should be thoroughly examined. It seems unnecessary to call attention to this fact, but in a leading case a tenant had failed to notice the defective construction of the drains, and having been advised by his physician that it would be dangerous to remain on the premises, he removed therefrom. It was held in this case that the defects in the drainage system were no defense to a claim for rent.

In the absence of a provision in the lease that the landlord shall make repairs, there is no implied covenant that the landlord warrants the leased premises to be tenantable. There is a popular impression that a landlord is bound to conform to what is a general practice of landlords, in repairing and keeping the rented property in good condition. This impression is erroneous, and trouble and expense will be saved by clearly setting forth in a lease the mutual obligations of a landlord and tenant concerning repairs.

Careful inquiry should be made of the landlord as to everything a tenant desires to know about the premises. A tenant desiring to lease a certain property for the purpose of conducting a millinery store asked the landlord about the condition of the bulk show windows and was told by the landlord that they had new roofs and were in perfect condition. As a matter of fact, the roofs of these windows were not new and were in very bad condition. The landlord in this case was held liable for deceit.

In large cities there are plans kept showing streets opened and unopened, and where a lease is contemplated for a long term, of property located in an unimproved neighborhood, and the lessee contemplates erecting improvements, the lessee should first ascertain whether or not any unopened streets on the city plan are made to run through the premises, and what effect a subsequent opening of such street would have upon any such improvements.

If a tenant intends expending a considerable sum of money for improvements he should carefully examine into the title of his prospective landlord. Of course, the law implies a covenant on the part of the landlord that the tenant shall have undisturbed possession of the demised premises during the term of the lease,

but this implied covenant may be a very insufficient protection if the landlord is financially irresponsible.

A tenant should also ascertain whether there are any charges or encumbrances, such as judgments, municipal claims or mortgages unsatisfied, which might result in a sheriff's sale of the premises and the destruction of the lease. In case of a sheriff's sale upon a prior encumbrance, the purchaser can give notice for possession and break the lease.

A tenant desiring to place signs on the walls of leased premises to advertise his business should provide for such right in his lease, otherwise this right could be denied him. If a tenant rents a floor he rents the inside and not the outside, and has no right to put out a sign in front unless the landlord consents.

Similarly if it is desired to exhibit a show case at the street entrance to a business property, this privilege should be stipulated in the lease. In a certain case the first floor of a property had been rented to a merchant tailor, while the second floor was rented to a photographer, who placed a show case upon the pavement beside the merchant tailor's door. The court held that all that any of the tenants had was an uninterrupted passageway in common with the public.

Protection in Case of Fire.

If a tenant rents only a floor of a building and such floor shall be wholly destroyed by fire or other casualty without his fault, the lease would thereupon terminate and the payment of rent cease. This, however, is not the case where a tenant rents the entire property, as previously pointed out. It should be provided in the lease that should the premises be wholly destroyed by fire, without the fault or neglect of the tenant or of his agents and servants, the lease shall become void. In such event, all back rent and the current rent apportioned up to the date of the fire may be recovered under the terms of the lease.

If the premises are only partially destroyed by fire, it is well to have a provision in the lease that the landlord shall repair the same and the tenant shall not be liable for rent during the period he is required to vacate the premises while the repairs are being made. If the tenant during repairs is deprived of only part of the premises he should be allowed a just proportion of the rent for the parts not occupied by him during the time required for repairing.

Protection of Fixtures in Cases of Renewed Leases.

A tenant is required at the expiration of his lease to remove his fixtures, and upon his failure to do so, they become the prop-

erty of the landlord. If, at the expiration of his term, a tenant renews his lease and acquires a fresh interest in the premises, he should take care to reserve the right to remove such fixtures at the end of the extended term.

Miscellaneous Precautions.

The law only gives the landlord the right to follow and distrain upon goods within a fixed time in cases of clandestine removal, and hence, as an extra security to the landlord, a clause should be inserted in the lease that in case the tenant shall remove his goods from the premises, whether clandestinely or otherwise, they may be distrained upon, wherever found, within thirty days after removal.

If a party desires to lease part of demised premises as a subtenant, he should first obtain the written consent of the paramount landlord and secure the benefit of the exemption law.

The owner of property who has placed fire insurance thereon should, in leasing the same, be careful to forbid such use of the premises by a tenant as would affect the insurance. For example, a property, which was originally occupied by a tenant as a shoe store, was changed by the tenant into a dry goods, hardware and grocery store, in which a keg of powder was placed. The storage of gunpowder and the occupation of a grocer were prohibited by the fire insurance policy. Fire broke out in the grocery store and the powder exploded. In a suit brought by the landlord to recover the insurance, the court held that the fire insurance company was not liable, and that it was immaterial that the landlord was ignorant of the use of the premises made by the tenant. Before leasing property the landlord should see that the business of the proposed tenant is not prohibited by the policy of fire insurance.

Estates in Land.

It will be recalled that our digression into the subject of landlord and tenant was undertaken in connection with our study of rents, one of the three classes of incorporeal hereditaments of present importance, to wit, commons, easements and rents. We will revert to the subject of real estate proper, and shall consider the estates and interests which may be had in "Things Real," with reference to (1) quantity, (2) time of enjoyment and (3) number and connection of the tenants.

An estate we have defined as that interest which a tenant has in land, tenements and hereditaments, and we shall consider estates with reference to their quantity, time of enjoyment and the number and connection of the tenants.

By the quantity of an estate, we mean the time the interest of a man in lands, tenements and hereditaments shall exist; that is, whether the interest shall be held by a man during his life and thereafter pass to his heirs, or whether such interest shall be limited to a term of years. Estates, therefore, are divided into (1) estates of freehold and (2) estates less than freehold.

The common division of freehold estates are into those (1) of inheritance and (2) those not of inheritance, such as an estate for life only. Again, freehold estates of inheritance are divided into (1) inheritance absolute and (2) inheritance limited. A freehold estate of inheritance absolute is what is known as an estate in fee simple, with which every real estate man should be familiar. A tenant in fee simple is one who has the right to hold lands, tenements and hereditaments for himself and his heirs forever. The word "fee," like the word "freehold," has assumed a secondary meaning, so that the technical meaning of the word in modern conveyancing is inheritance. We note, therefore, that by an estate in fee is meant an estate of inheritance. Now a fee may be either a fee simple or a fee tail. A fee simple is where the inheritance is to descend to the heirs of the tenant without condition or qualification. The word simple is usually dropped, as an estate in fee is ordinarily understood to be an estate in fee simple.

Originally the word "heirs" was necessary to create a fee simple by conveyance. A deed to a man to endure as long as the waters of the Delaware should run was held to pass a life estate only, but in recent years this rule has been relaxed, and an estate of inheritance frequently passes without the use of the word heirs, although it is customary to use the word. In a deed to a corporation, instead of the word heirs, the words successors and assigns should be used to indicate the quantity of estate conveyed. A conveyance to a man and his heirs vests an absolute title in the holder of the lands. The heirs of said donee have no estate because a man has no heirs until he is dead. Hence, if John Doe is alive, a conveyance to the heirs of John Doe would be void on the ground of uncertainty.

The principal feature of an estate in fee simple is the power of the owner to alien or transfer the same.

There is a certain class of persons who, even though taking an estate in fee simple, cannot convey it, such as infants, lunatics and habitual drunkards, but this is due to personal disability. Furthermore, a married woman cannot convey any real estate unless her husband joins in the deed. Corporations are forbidden to hold lands unless specifically authorized to do so by their charter.

If a man is the owner of land in fee simple he may do with

it what he pleases, subject to one or two public and private limitations. He must pay such taxes as are duly assessed thereon, submit to police regulations, and is subject to the right of the state to take his land for public uses under the doctrine of eminent domain, of which more hereafter.

Moreover, an owner of land in fee simple must so use his property as not to injure that of another. No duty is owing to a trespasser on his land, and if one enters without the permission of the owner and is injured he could not recover damages from the owner.

Having considered the nature of absolute estates of inheritance or estates in fee simple, which is the largest estate a man may enjoy in things real, we will direct our inquiry next into limited estates of inheritance, which are of two kinds—(1) qualified, base or determinable fees, and (2) conditional fees, afterward known as fees tail.

A qualified fee is one subject to a qualification and terminates when the qualification is at an end. Such an estate may continue indefinitely, but is liable to be determined by some act or event specified in the grant. To borrow an old illustration, an estate may be given to a man and his heirs so long as St. Paul's Church shall stand. Such is a qualified fee, because the duration of the estate depends upon some circumstance which qualifies it. The owner of a base or qualified fee has the same rights and privileges as the owner of a fee simple, but he cannot transfer any greater estate than he himself enjoys.

Conditional Fees (Fees-Tail).

Passing from freehold estates of inheritance, both absolute and limited, we come to freehold estates not of inheritance, such as life estates, which are of two kinds, (1) Conventional, or those created by the act of the parties; and (2) those which are created by the operation of law.

Ordinarily the words used in conveying a life estate are "for and during the term of his natural life" or "for life."

Sometimes an estate is granted during the life of a third person, as, for example, a grant of land to John Doe as long as Richard Roe lives.

A life estate may be qualified or determinable the same as determinable or qualified fees. To illustrate, suppose an estate is granted to Jane Doe "as long as she remains unmarried," or as long as she resides in a certain place. Such an estate is known as a qualified or determinable life estate, for, although it may exist as long as the person lives, it may, nevertheless, be ended sooner upon the happening of an event or the doing of an act.

We must in this connection carefully distinguish a life estate from an estate for years. If an estate is granted to John Doe for the period of one hundred years, the right granted is not a life estate, but a term which is but an inferior chattel interest in lands.

In view of the fact that there are others who have rights in the land after him, a tenant for life is under certain restrictions regarding his possession of the land. A life tenant is prohibited from committing waste, which is any injury done to real property by one having lawful possession thereof, but only having a limited estate therein. There are two kinds of waste, (1) Voluntary, which is an act of commission, and (2) Permissive, which results from omission or neglect. A tenant for life of land is required to farm it in a husband-like manner so as not to cause it to deteriorate in value to such an extent that it would be unfitted for the purpose for which it was originally intended when the life tenant came into possession.

Concerning the right of a tenant for life cutting down the timber on his land, circumstances must govern every particular case. In some sections of the country, the cutting down of timber increases the value of the tract, while in other parts it decreases the value, in which latter case waste would be committed in so doing.

The law will not permit a tenant for life to open a mine which may happen to be on his property, but if a mine has been opened, a tenant for life may operate such mine for profit until the mineral is exhausted without committing waste. A tenant for life cannot, however, go through an old opening to reach a new vein, but if a mine has been already opened a tenant for life upon taking possession may make a new opening to reach all the mineral in that particular vein.

A tenant for life is liable in damages for failure to repair houses and fences and keep the property in good condition. A life tenant is required to pay interest on mortgages and all taxes assessed against he land, but is not bound to pay off the principal of any encumbrance. In case it is necessary to pay off an encumbrance, a tenant for life may be compelled to contribute in proportion to the benefit he will derive by not having to meet the annual payments of interest during his lifetime.

Life Estates Created by Operation of Law.

A life estate may be created by operation of law in four different ways, only two of which are of sufficient importance to discuss in a course of this character, *i. e.*, a husband's curtesy and wife's dower.

A husband's curtesy is that interest which a man has in the lands in which his wife has an estate of inheritance. At common law a freehold estate in his wife's lands vested in the husband upon marriage, which lasted during their joint lives.

Intestate laws ordinarily provide that if a married woman should die intestate, her real estate shall descend as thereinafter provided, "saving to the husband his right as tenant by the curtesy which shall take place, although there be no issue of the marriage in all cases where the issue, if any, would have inherited."

An absolute divorce destroys the right of curtesy, but a limited divorce will not. It is also provided by statute that if a husband deserts his wife or refuses to provide for her for one year or more, he loses his claim to curtesy in his wife's real estate.

Dower.

Dower at common law is a life estate which the law gives to the wife after the death of her husband. Such dower interest was formerly in most states limited to one-third part of the real estate which her husband was possessed of at any time during the marriage for an estate of inheritance. The right of dower being regulated to-day by statute, the reader is referred to the legislation on that subject in his particular state.

Fixtures.

It was pointed out before that the owner of land owned not only the surface of the ground, but all above and beneath indefinitely. Such is known as land natural. It is an old rule of the common law that everything affixed to land becomes part of the land, as, for example, trees, fences, houses, etc. Conversely, whatever is separated from land loses its character as land. Clay and limestone are land, but dug up and made in the form of bricks and lime become chattels.

The principal exception to the above-stated rule is furnished in the case of fixtures. A chattel attached to land is called a fixture, and it is very important to know under what circumstances a fixture is to be regarded as a part of land and when as personal property.

If the old maxim of the law to the effect that everything affixed to land became land were literally applied, every chattel or fixture attached to real estate would be transformed into realty. Such, however, is not the case. Whether or not a fixture is to be regarded as real estate or personal property depends more upon the intention of the party who constructed the fixture than upon mere physical attachment. In determining this question the fact to be established is whether it was intended to make the

chattel a permanent part of the freehold, or merely a temporary arrangement.

The intention of the party making the annexation is presumed from the nature of the article annexed, the relation of the party making the annexation, the manner of annexation, and the use of it.

It has been held that gas fixtures and heaters are not fixtures to be included as part of the real estate to which they are attached. Gas fittings, on the other hand, are fixtures which are part of the real estate. As a general rule, the machinery in a mill or factory is real estate, and passes upon a sale of the factory.

Ordinarily the question whether or not a certain annexation is a fixture and whether a right to remove the same exists, arises upon a change of title or possession of property.

Consequently the parties between whom this question of fixtures may arise are (1) heirs and executors, (2) vendors and vendee, (3) mortgagor and mortgagee, (4) landlord and tenant, and (5) life tenant and remainderman, respectively.

A fixture to remain personal property must be of such a nature that it can be removed without doing permanent injury to the freehold.

Exceptions.

Certain exceptions exist in the case of a landlord and tenant, relative to the right to remove fixtures, which apply to cases of trade fixtures, or such articles as are necessary to carry on a particular trade; agricultural fixtures, and domestic fixtures, such as are attached to dwelling houses as a means of convenience and comfort. The above-named classes of fixtures may be removed by the tenant, but must be done in such a way as not to injure the freehold.

In this connection it is of interest to those living in farming districts to consider the law regarding emblements, which is the term applied to the right of a tenant to take and carry away corn or other crops produced by his labor, after his term has expired. The law provides that a tenant has the right and title to the "way-going" crop. That is, where a tenant whose term expires in the spring of the year plants winter grain, which does not mature until the following summer, said tenant may return after his term has expired to cut and take his crop away. The tenant may sell his way-going crop as personal property.

In the case of trees, which are not produced annually, they are part of the real estate and pass in a conveyance of land within the boundaries of which the entire trunk is located. An adjoining landowner may cut out the roots or cut off so much of the branches as projects over his land. However, the fruit of such

extending branches belong to the owner of the trunk. A tree is common property if the trunk of the tree is on both sides of the boundary line. Trees, of course, become personal property as soon as they are cut down.

Land is divided both horizontally and perpendicularly. A man may sell the timber on his land to another and the minerals beneath it to a third, and reserve the surface for himself.

The perpendicular division of land involves the question of boundary lines, to which it will be instructive to advert briefly.

Boundaries to land may consist of imaginary lines upon the surface of the earth, or of material and visible objects, such as fences, roads and streams of water.

If a navigable river constitutes a boundary line, the title of the landowner extends to low water-mark, subject to the right of the public to use the stream for purposes of navigation.

In cases where land is bounded by an unnavigable stream the title of the owner extends to the middle of the stream. When an unnavigable stream changes its channel the title of the adjacent landowners follows the change, but where the change is sudden the ownership remains according to the former bounds. If a stream should change its channel and make an entirely new one in the land of the owner on one side, he will become owner of the whole river, so far as it is inclosed by his land.

Party Walls.

In connection with the subject of boundary lines, let us consider briefly the law applicable to party walls. A landowner about to construct a building thereon may place the dividing wall between him and the adjacent landowner equally upon the land of each. Such a wall will be a party wall if any part of it is over the boundary line. Unless a wall, foundation and all be wholly within the boundary line of the builder, it will be a party wall subject to the restrictions regulating the same. Originally the right of the builder of a party wall to be compensated by the adjoining landowner for the use of so much of the wall as was erected on his land, was held to be a right to a sum of money and therefore personalty, and would not pass to a purchaser on a sale of the building of which the party wall formed part.

The rights and obligations of adjoining landowners to party walls are usually regulated by local statute or ordinace, to which the reader is referred; the building regulations varying so radically in different localities as to make it inadvisable to set forth herein.

Hereditaments.

The term hereditament which is employed in every deed to real estate, should be clearly understood. Hereditaments, including whatever rights may be inherited, are divided into corporeal hereditaments and incorporeal hereditaments. Corporeal hereditaments consist of "land, structures thereon and fixtures thereto," being rights to things visible to the senses. We have emphasized the significance of the term land and indicated the manner in which it is divided. Let us next turn our attention to incorporeal hereditaments which have been defined to be "rights issuing out of, annexed to or exercisable within land." Incorporeal hereditaments are principally of ten sorts: Advowsons, tithes, commons, ways, offices, dignities, franchises, corodies or pensions, annuities and rents. Passing over those which are obsolete, we will limit our inquiry to those of present-day importance to a real estate man, namely, commons, ways or easements, and rents.

A right of common is that estate which one man, or many men, may have in the land of another. In reality it is a special privilege annexed to the land and passes by the conveyance of the land to which it is attached.

Rights of common are of four kinds: A common of pasture is the right to pasture cattle on the lands of another. A common of piscary is the right given to fish in the streams located on another man's land. A common of turbary is the right to take soil or mine coal on another's land. A common of estovers is the right to take timber from the land owned by another. Such rights are incorporeal hereditaments, that is such rights as may be inherited, although intangible. Originally these rights were established by long-continued usage or custom, but later by special grant in a deed. Such rights of common as now exist rest upon grant, either express or implied. Many cities and towns have large tracts of land appropriated to public use known as town squares or "commons." The original owners of such land cannot reclaim the same after it has been accepted by the public.

An easement has been defined to be "a liberty, privilege or advantage in land, without profit, existing distinct from an ownership in the soil." A right of common confers the privilege of consuming land so as to receive profit therefrom. The distinguishing feature of an easement is that it gives the right to use lands without consuming it, *i. e.*, with no profit. For example, a private roadway over the land of another is an easement. The most common illustrations of easements are (1) ways, (2) water-courses and other water rights, (3) lateral support, (4) drain and drip, (5) burial lots and pews, and (6) light and air.

A right of way is the right which confers on one or more persons or the public the privilege of passing over the land of another; where this right exists in favor of one or more individuals it is known as a private right of way; if the right is enjoyed by the public generally it is a public right of way. There are footways and carriageways, and a right of way granted to an individual will not authorize the passage of horses and cattle over the way. Streets, roads, navigable rivers and many private streams so declared by statute are public highways. Practically every creek in Pennsylvania sufficiently large to float logs has been declared a highway.

With the exception of navigable rivers, the title of the owner of land goes to the middle of all highways; the owner cannot, however, deprive the public of their right of way over said highway. The owner of land along a public river may build wharves upon it, subject to legislative control.

Ways of Necessity.

In cases where certain land is granted which is either entirely or partially surrounded by land of the grantor, and the grantee has no way out of his land except through the land of the grantor, the law presumes that a right of way was granted. Such are known as ways of necessity.

Public ways must be kept in repair by the township, borough or city, and any neglect of this duty renders the municipal corporation liable in damages to any one injured. A town or city is liable for any accident due to the faulty condition of a foot pavement; the owner of the house which fronts on the pavement is also liable in such case, but if the house is occupied by a tenant such tenant becomes liable.

The owner of the land through which a private right of way exists must keep such way in good condition.

During the middle ages the occupation of agriculture was thought to be beneath the dignity of a gentleman. Consequently holders of freehold estates would allot certain portions of their lands at will, for which they received in return a portion of the crops which such land yielded. Gradually those who tilled the soil acquired an indefeasible right to the possession of the land for a definite period of time, which became in reality an estate in the land, but which, of course, was less than a freehold.

There are four qualities of estates less than freehold: (1) estates for years; (2) tenant from year to year; (3) tenant at will, and (4) tenant at sufferance. As we have already discussed the first two classes in connection with the subject of landlord

and tenant, it will only be necessary to distinguish the latter two classes of estates less than freehold.

Tenant at Will.

Although the courts will always endeavor to so construe a lease as to give the tenant the benefit of a definite time, estates at will may and do exist, which arise in cases where one man leases lands to another to have and to hold at will of the lessor. The lessee is a mere tenant at will, for the landlord may dispossess him at any time he so desires.

In cases of a tenancy at will, the tenant is under no obligation to stay, and may leave when he pleases the same as a landlord may enter when he pleases. A tenant at will cannot assign his estate, and is bound not to commit any voluntary waste, but is not liable for permissive waste, as is the case of a tenant for years.

A tenant at sufferance is one who acquires possession of land lawfully and holds it afterward without any title. He has no right of possession nor any estate in the land, but, nevertheless, is not a trespasser.

Estates upon Condition.

Frequently an estate in lands is made to depend upon the happening or not happening of an uncertain condition. Such estates are known as estates upon condition, either implied or express. It is important to distinguish between a condition in a deed and a covenant. Where it is provided that an estate shall be either created, enlarged or destroyed upon the happening of a specified event, such a proviso is a condition, upon the breach of which the estate terminates. A covenant is an agreement under seal, and upon breach of a covenant the estate will not be forfeited, the only remedy to the injured party being an action for damages on account of the breach.

Express conditions may be either precedent or subsequent. A condition precedent is such a condition as must be performed before any estate can vest. A condition subsequent, on the other hand, is one which upon its happening will defeat an estate already vested. Any condition, whether precedent or subsequent, is void if in restraint of trade, marriage or which is repugnant to the nature of the estate granted.

Mortgages.

Mortgages, although regarded by the law as personal property form one of the most important parts of the subject of real

estate. A mortgage is a document transferring title to real estate to one loaning a certain sum of money to the owner thereof. In every mortgage there is contained a clause of defeasance, which provides that if the money is repaid within the time specified the property shall revert. The party giving the mortgage is called the mortgagor (the borrower), and the party who lends the money and takes a mortgage as security for its repayment is called the mortgagee. A mortgage may be for any quantity of estate, but are most commonly in fee simple. Every mortgage must, in view of the Statute of Frauds, be in writing. It is not necessary for a wife to join in a mortgage made by her husband, and if real estate mortgaged by a married man is sold under proceedings upon a mortgage the purchaser at sheriff's sale takes the same clear of the wife's dower, which would not be the case in an ordinary conveyance of land. Whenever land is conveyed as a security for the payment of money the law will regard the conveyance as a mortgage, and will not permit the creditor to take more than is justly due him, as the value of the property conveyed frequently exceeds the amount of the loan. A husband must join in his wife's mortgage. See Married Women's Acts for local requirements.

Equity of Redemption.

Originally, according to the strict common-law construction of conditions broken and the enforcement of forfeitures thereupon, great hardship was occasioned. If the mortgagor was unable on the day required, to pay the amount due, the estate vested absolutely in the mortgagee, and no subsequent tender or payment could operate to revest the title in the mortgagor. In equity a mortgage was regarded as a mere pledge for a debt, and if the debt was paid together with a penalty for the delay, the debtor should have his property back again. Consequently equity recognized the mortgagor's right to redeem, and this right is known as the mortgagor's equity of redemption. This equity of redemption is, however, limited in point of time, as it would be obviously unjust to allow a mortgagor an unlimited option to redeem, and if this right is not taken advantage of within a reasonable time after default, the mortgagee may go into court and foreclose the mortgagor's equity of redemption. The court will then fix a new day on or before which the mortgagor must pay the debt, and if he failed to meet his obligation upon the new date thus specified his right to redeem was forever gone, and the estate forfeited to the mortgagee.

In making a mortgage the debt is usually set forth in a bond,

which is executed together with the mortgage. The law is well settled as to debts which may be secured by mortgage. As against third persons, a valid mortgage can only be created for a debt having a definite existence at the time the mortgage is signed. A mortgage may be made to secure future advances to be made by third parties, but future advances are not secured unless the mortgagee is bound by his agreement to make them.

Upon the death of a mortgagor the property descends to his heirs, and if the mortgagee dies the mortgage held by him passes to his executors, as it is personal property. If a man buys a property "under and subject to a mortgage," he becomes liable to satisfy the same, as the property mortgaged is looked upon as a fund for the payment of the mortgage and one who has the fund ought to pay the debt.

A mortgage operates as a lien upon the mortgaged premises and may be prior or subsequent to other liens and mortgages. The words "first mortgage" means that the lien of the mortgage is prior to any other claim. By a "second mortgage" is meant one without intervening liens between it and the first.

Recording.

By statute all mortgages are given priority according to the date of recording the same, without regard to the time of making or executing the same, except that in the case of a purchase-money mortgage the law in most states provides that it shall maintain its priority if recorded within a certain number of days (generally sixty days) after date of execution.

A mortgage should be recorded immediately. The recorder of deeds is required to note on every mortgage the time when left for filing, and if two mortgages are given on the same day, the one left first at the recorder of deeds' office shall take priority.

Lien of a Mortgage.

A lien may be defined to be a right of priority in relation to two or more claims against the same subject-matter. A man who holds a mortgage against a property and has duly recorded the same, has a right to have his mortgage satisfied out of a fund realized upon a sale of the mortgaged premises before any other creditor of the owner.

Legislative enactments usually preserve the lien of a mortgage by providing that the prior lien of a mortgage shall not be destroyed or in any wise affected by any judicial or other sale whatsoever, whether such sale shall be made by virtue or authority of any order or decree of any orphans' court or other

court, or of any writ of execution, or otherwise, howsoever, provided that the act should not apply to cases of mortgages upon unseated lands, or sales of the same for taxes. Municipal and state taxes have priority over every other claim against real estate.

Upon default of the mortgagor the mortgagee has three remedies, (1) he may bring an action of ejectment, which is very seldom done, owing to the nature of the proceeding, (2) he may enter up judgment on the bond and warrant of attorney accompanying the same, (3) or he may issue a *scire facias*, which is the customary way of foreclosing a mortgage in most states.

Trust or Trust Estates.

A trust has been defined to be "the right, enforceable solely in equity, to the beneficial enjoyment of property of which the legal title is in another." A trust arises when real estate is conveyed to a party (in trust) to hold for and on behalf of another. The party having the legal title is called the "trustee" and the party for whom the land is held is called the "*cestui que* trust." The idea of dividing the legal from the equitable title to land has become very common and affords various means of protection.

Estates of Future Enjoyment.

We have, heretofore, in discussing the matter of estates, made references chiefly to those in actual possession.

A right to possess and enjoy real estate to vest in the future is known as an estate in expectancy, which class of estates is divided into (1) those created by the acts of the parties known as remainders, and (2) those arising upon construction of law, known as reversions.

A remainder is an estate limited to take effect and be enjoyed after another estate is determined, as, for example, a conveyance of land to John Doe for life, and after his death to Richard Roe in fee. In this illustration the original estate in fee is divided into two, a life estate in present enjoyment, and an estate in remainder in fee, to take effect after the life estate is determined.

There are two kinds of remainders, vested and contingent. A vested remainder is an estate in which the remainder vests immediately in a certain person, who becomes entitled to possession upon the determination of the original or particular estate. A contingent remainder is where the person to whom, or the event upon which the future estate is to be enjoyed, is at present uncertain as, for example, an estate to Joe Doe for life,

remainder to the oldest son of Richard Roe, while Richard Roe has no son. In this case the remainder does not immediately vest, because it could not take effect if the particular estate ended at any time before Richard Roe had a son. It is therefore contingent.

A reversion is an estate created by operation of law and is the residue of an estate left in the grantor to commence in possession after the termination of some particular estate granted by him.

In Pennsylvania all estates in expectancy may be conveyed by the owners, and all possible titles, legal or equitable, vested or contingent, in real estate, may be taken in execution and sold for the debts of the owner.

Passing from those estates in which but a single person has a present right of possession or enjoyment, there yet remains for us to consider cases in which two or more have a present right of possession of real estate, which cases may be divided into four classes: (1) Joint tenants, (2) tenants by entireties, (3) coparceners, and (4) tenants in common. With the exception of the third class, these joint interests in estates may be of any quantity (duration) and may be either in possession or expectancy.

Joint tenants are those who have a joint title to real estate expressly created by one and the same deed or will. Upon the death of one joint tenant his interest passes to the survivors, and so on to the last survivor. By statute in most states all joint tenants are converted into tenants in common.

Estates by entireties arise where title to land devolves by grant, devise or descent to a man and wife. Such can only be created during coverture. If the wife survives she take the estate by survivorship clear of her husband's debts, for the reason that she does not take by or through him, but by virtue of the paramount grant to herself in the original conveyance. Coparceners are those who take land equally by descent from an ancestor, but an estate in coparcenary is practically obsolete.

Tenants in common are those who enjoy a unity of possession in real estate, and, with the exception of trust estates and estates by entireties, all estates held by a plurality of tenants are of this nature.

This concludes our inquiry into the nature of estates. We will next consider, under the title of Conveyancing, how such estates may be transferred.

Conveyancing.

Having concluded our inquiry into the nature and quantity of interest which a man may have in things real (real estate),

the next question which logically suggests itself is: How may such interest be transferred? The right under which a man holds any interest in real estate is known as his title thereto, and conveyancing is that science which indicates the manner in which title to real estate may be transferred.

Title to real estate may be acquired either by conveyance, by devise or by descent. A perfect title comprises the union of possession, with the right of possession and the right of property. Mere actual possession is the lowest and most imperfect title to land, for both the right of possession and the right of property may be in another who has been dispossessed. Possession is, of course, *prima facie* evidence of title, and one in possession of real property may hold the same against all the world except the lawful owner. The real owner may, however, enter upon the land and dispossess one who has only a bare possession, provided he do so peaceably and does not violate the Statute of Forcible Entry. A man may have a good title, combining possession, right of possession and right of property, nevertheless, it may not be a marketable title, which is such a title as a court would compel a purchaser to accept. To constitute a marketable title it should not depend on any evidence outside of the record, except matters of pedigree, etc.

A court will not decree a specific performance of a contract of sale if there is any reasonable or substantial doubt regarding the title.

Title to real estate, generally speaking, is acquired in either one of two ways: (1) By descent, or (2) by purchase. By descent is meant hereditary succession, or that title whereby a man acquires an estate by representation as heir upon the death of another. The word purchase has a very broad meaning and is that title to real estate which is acquired in any other way except by descent. The word descent is a technical word and applies only to real estate, as personal property does not descend, but goes to the executor or administrator to be disposed of and distributed by him under the law. Descent is the devolution of title upon the heir, and is confined to freehold estates of inheritance. An infant, an unborn child, an idiot, a married woman or a lunatic may be an heir and inherit real estate. The only exception to those who may inherit is found in the case of illegitimate children. Although at common law an alien could not inherit real estate, he is given this right by statute the same as a natural-born citizen in most states.

Rights of Adopted Children.

If a person adopts a child legally the relationship thus created does not make the adopting parent a father or mother within the meaning of the intestate law, the rights of adopting parents and children being regulated by statute.

An adopted child may ordinarily inherit both from its adoptive parent and from or through its natural parent. The adoptive parent is entitled to the services and earnings of the adopted child and in his own name may sue for such earnings or for an injury to such child. An adopted child cannot inherit from the collateral kindred of its adoptive parent, or from the ancestors of such parent. When adopted by one spouse, he does not become the heir of the other.

Title vests in an heir by operation of law, for descent is inevitable.

The devolution of real estate under intestacy and by will is entirely a matter of legislative control and the reader is referred to the statutes of his own state for the law applicable thereto, which is of such a conflicting as well as complex nature as to make it impracticable to insert in this book.

Collateral Descent.

If an intestate dies without leaving any descendants of any degree, his real estate descends to his collateral descendants, subject to the life estate given to the widow, surviving husband, father or mother, as the case may be. Collateral kindred may be either those who are descended from the father or mother of the intestate, which are called near collaterals, or those whose relationship with the intestate is derived from a common ancestor more remote than his father or mother, which class are called remote collaterals.

Near collaterals are again divided into those of the whole blood and those of the half blood, the former being those descended from both parents of the intestate, while the latter are those descended from only one of the parents of the intestate. Remote collaterals cannot inherit if any of the near collaterals are living, and near collaterals of the half blood cannot inherit the real estate if any of the whole blood are living, but personal property is divided among near collaterals without distinction of blood.

An intestate's brother and sisters, and the descendants of them are near collaterals of the whole blood.

In default of collaterals of the whole blood the real estate passes to the father or mother in fee. Brothers and sisters of the half blood will only take an intestate's real estate in default of all previous classes.

It is an old doctrine of the common law that no one can inherit real estate who is not of the blood of the first purchaser or original owner of the land.

Title by Purchase.

Turning to the second method of obtaining title to real estate, namely, by Purchase, title by purchase may be acquired in five different ways: By escheat, occupancy, prescription, forfeiture and alienation, the latter of which is by far the most important.

Title by escheat, as above observed, happens when an owner of real estate dies without known heirs or kindred, when such real estate escheats to the state.

Title by forfeiture is where real estate is taken as a punishment under legal process, as for example, crimes, bankruptcy, etc.

Lands are no longer forfeited on account of crimes. Few titles are at present obtained by forfeiture.

Title by occupancy, or as better known by settlement, was a very favorite method of obtaining property prior to the Revolutionary War, but is of little importance today. When William Penn first landed in Pennsylvania, he found several hundred Swedes and Dutch already settled there. To develop the province, the rights of any one who would settle upon a piece of land and cultivate it were respected, and such settler in time would acquire a title to the property by occupancy or settlement.

Prescription.

To quote a familiar adage: "Possession is nine points of law," and possession of real estate is *prima facie* evidence of title. Long and continued possession of property is held to be conclusive evidence of title, because if a man has had long, continued and uninterrupted possession of real estate it is only reasonable to assume that he has a lawful title thereto.

Where a person has had such long, continued and uninterrupted possession of real estate, he acquires what is known as a title by prescription, which presupposes a grant.

Strictly speaking, title by prescription only applies to incorporeal hereditaments, as these only could be granted, as corporeal hereditaments required actual transfer. However, today, if a man has enjoyed continued and uninterrupted possession of real estate for twenty-one years adverse to anyone else, such party is said to acquire a title thereto by prescription.

The important subject of title by alienation, or the manner in which real estate is transferred by deed, will be considered next.

The last and most important method whereby title to real estate may be acquired by purchase is that of alienation, which, generally speaking, includes all modes of conveying real property between living men. The written instrument by which this transfer is made is called a deed.

A deed to be valid must possess the following requisites: (1) It must be in writing. (2) The parties thereto must be competent to contract. (3) There must be a valid consideration. (4) There must be a grant of property. (5) The deed must be properly executed, *i. e.*, signed, sealed, attested and acknowledged. (6) It must be delivered and accepted. (7) It must be recorded. We will consider these various requirements separately and in their order.

In the first place, a deed is required by statute to be in writing and must set forth clearly the agreement between the parties. An indenture is the appropriate name of a deed to which there are two or more parties; a deed poll is the deed of a single party. Strictly speaking, there should be as many copies of an indenture as there are parties to it, but this is ordinarily omitted in practice except where several parties acquire estates or interests thereunder. Where several copies are made they form together but one deed, one of the parts being called the original, while the remainder are called counterparts. Careful conveyancers still adhere to this practice, but as a deed is required to be recorded, a certified copy of the record is as effectual in evidence as if the original were produced in court. The words with which an indenture concludes—"the said parties have interchangeably set their hands and seals"—show the custom of having several parts.

A deed must contain operative words of conveyance, the words in common use being "give, grant, bargain and sell." In connection with the necessity of every deed being in writing, it should also be observed that no alteration or interlineation should appear in the body of the deed. If it is necessary to make an alteration in the body of the deed the erasure or interlineation should be noted upon the instrument above the attestation clause.

The law provides that any transfer of any interest or estate in lands, tenements or hereditaments which is made by parol, and which is not put in writing and signed by the parties so transferring such interest, shall have the force and effect of leases or estates at will only. Every transfer of any interest in real estate should be in writing, although the law does not require this to be done in the case of a lease of real estate for a term not exceeding three years.

Sufficient Parties.

With reference to the parties to a deed, the law requires that the grantor must have title or capacity to convey, and that the grantee must have proper capacity to take and hold real estate.

The presumption is that a corporation has no power to hold real estate, and legislative authority must be shown to entitle them to do so.

Unincorporated societies cannot hold real estate except as trustees for a charitable use.

Any person under twenty-one years of age, not having full capacity to contract, cannot be a party to a valid deed. A deed made by an infant is voidable, but after arriving at full age may be either ratified or avoided. Infants may, however, hold lands as trustees for another.

The deed of an insane person is void, but such a deed may be rendered valid if the insane person subsequently recovers his reason and ratifies the same.

The competency of married women and partners to convey real estates has been discussed heretofore. See Chapter on Partnership and Abstract of Married Women's Acts.

In summarizing the competency of parties to a deed it may be laid down as a general rule that anyone who is competent to make a valid contract is also competent to make a valid deed for the conveyance of real estate.

Consideration.

As in the case of any contract, a deed is required to be supported by a valuable consideration, which, however, need not be expressed in the deed, as where a receipt is subjoined which acknowledges the transfer of money. It is also allowable to prove the consideration by oral evidence. There are two kinds of considerations recognized by the law as being sufficient: (1) valuable consideration, and (2) good consideration. A valuable consideration is money or other property which bears a known value. It has been held that a marriage constituted a valuable consideration for the transfer of real estate.

If a valuable consideration is lacking, a deed may be supported by what is known as a good consideration, which is such as cannot be said to have a pecuniary value, but which rests upon moral grounds, such as the natural love and affection which a man bears to his blood relatives or kindred. If the grantor has existing creditors, a good consideration will not be sufficient to support a transfer of property.

The Estate Conveyed.

A deed transfers title to land and the rights issuing out of lands. The conveyance of a mere expectancy is impossible at law, but may be enforced in equity as an executory agreement to convey, which agreement must be sustained by a valuable consideration.

It is necessary to describe specifically in a deed the land transferred thereby. The descriptions of city property should be very full, accurate and complete. Such descriptions should set forth monuments, courses and distances, and the quantity of land conveyed. By monuments we mean such landmarks as are set up for the purpose of indicating boundaries, such monuments being of two kinds—natural and artificial.

Natural monuments are such objects as nature has placed on the land, such, for example, as rivers, trees, ponds, etc.

Artificial boundaries are means which man has placed on land for the purpose of indicating boundaries, such as fences, roads, walls, etc. Very high regard is given by the law to natural monuments, and existing ones may be proven by parol evidence.

If land conveyed by a deed is bounded by a navigable river, the boundary line should be described as extending to the low-water mark of such stream. If the stream is not a navigable one, and the land is described as being bounded on or running along said stream, the boundary line will extend to the center of the stream, which of course would change with the natural change of the stream.

In the case of ponds and lakes, the boundary line is along the edge at low-water mark, provided the lake is a natural one. If the pond or lake is an artificial one, the boundary extends to its center.

If a deed describes the land as being bounded on or along an open highway or street, the boundary line is the center of the street.

It is a well-settled rule of law that whatever belongs to the land granted as part of it will pass with the grant of the land unless in the deed it is expressly reserved.

Execution.

If it is required by either party, the deed must be read in order to be binding, but there is a presumption that every party to a deed is thoroughly familiar with its contents.

After reading a deed, the same must be signed by the grantor or by an agent duly authorized to act for him. An agent to qualify as such must have a power of attorney under seal signed

by his principal, or he must execute the same in the presence of his principal. In case the grantor is a person who cannot write, his signature may be made by a mark, but such mark should be attested by the person who writes the name of the party, who should sign as a subscribing witness.

Until sealed, a writing is not a deed, but it is not necessary that such writing be sealed in order to operate as a conveyance of land. A seal gives certain effect to the statements contained in a deed, but is not required to be attached to a deed under the Statutes of Frauds, etc.

Any scroll or mark of ink is sufficient if it clearly indicates the intention of the grantor to regard it as a seal. Usually a scroll is made around the word "Seal" or "L. S." The deed of course recites the fact that the grantor has affixed his seal thereto. The corporate seal is ordinarily used in all corporate deeds, but it has been held that a deed signed by the president of a corporation, with an ink scroll opposite his name, is sufficient.

Attestation.

It is a wise precaution and in most states mandatory to have two persons sign their names as witnesses to the signature of the grantor. A person dealing with a corporation should ascertain the authority of the officers, as a corporate seal should be attested by the signature of the president and of the officer who has charge of the seal, this officer usually being the secretary.

Acknowledgment.

The party signing a deed is required to appear and acknowledge before a competent officer, most commonly a notary public, that the deed is his act and deed and that he desires the same to be recorded as such.

The party taking the acknowledgment must not be interested in the conveyance, otherwise the certificate will be valueless.

Delivery.

The deed being signed and sealed, is now ready to be delivered, delivery of the deed being absolutely necessary to pass title, the same taking effect, as between the immediate parties, from the date of delivery. Possession of a deed by a grantee is presumptive evidence of delivery, but if the deed came into his possession without the knowledge or consent of the grantor, no title will pass.

When a deed is delivered by the grantor to a third party, to

be held until certain conditions have been performed, upon which it is to be transferred to the grantee, it is said to be delivered in escrow.

Recording.

To render a deed valid and complete it is further required that the same be recorded.

Almost the first act performed by William Penn upon landing in Pennsylvania was to establish an office for recording deeds.

The purpose of recording a deed is to give every one notice of the exact condition of the title to real estate, as an innocent purchaser is thus guided in knowing what he is buying.

Every deed or instrument of writing by which title to lands, tenements or hereditaments is transferred or affected in law or in equity must be recorded, after having been first acknowledged or proved.

The necessity for promptly recording a deed cannot be overestimated. Where a forged deed is recorded one who buys on the strength of the record takes no title, even an innocent purchaser not acquiring title in this way.

Having considered the requisites of a valid deed, we will direct our attention next to an analysis of the component parts of a deed, it being borne in mind that in a course of this character, our object is to emphasize only the most important features of the law.

A deed may be divided into the following parts:

1. The Premises, which include the date, the name of the parties, the recitals, the consideration and receipt of same, operative words of conveyance, the description of the thing granted, and reservations and exceptions.

2. The Habendum, which begins with the words "to have and to hold," and indicates the quantity of estate granted.

3. The Tenendum, of no use at the present time.

4. The Reddendum, being that clause of the deed reserving rent or other interest in the estate to the grantor.

5. The conditions upon which an estate is granted (being either conditions subsequent or conditions precedent, which we considered under estates upon conditions).

6. Warranty.

7. Covenants, either on the part of the grantor or grantee to do or refrain from doing something in relation to the estate granted.

In connection with the component parts of a deed it would be well to make a few brief observations.

The various requisites of a deed need not of necessity be included in the premises, but will be equally effective if appearing in other parts of the deed. If the date of the deed is omitted, the presumption is that the date of delivery is the date of the deed.

Immediately after the premises comes the habendum, with which in recent times the tenendum is joined. The object of the habendum is to limit and define the quantity of estate which the grantee is to take. It is possible to omit the habendum altogether from a deed without invalidating it. The quantity of estate having been stated in the granting part of the premises, the use of the habendum is to either lessen, enlarge, explain or qualify the estate limited in the premises. Although the habendum may explain and qualify the premises it cannot, however, be totally repugnant to them.

If it is desired to create any trusts, they are declared after the words in the habendum limiting the quantity of estate granted. If there are any incumbrances in the nature of mortgages, ground rents, building restrictions, etc., against the estate, they should be next mentioned commencing with the words "under and subject nevertheless."

The reddendum is that part of a deed which reserves a rent or other interest in the estate to the grantor. It usually follows the habendum, beginning with the words "Yielding and paying therefor and thereout, unto the said John Doe, his heirs and assigns, the yearly rent or sum of ( ) dollars," etc.

The conditions annexed to the estate granted follow the reddendum.

The warranty and covenants which come after the conditions, may be considered together. A covenant is an agreement under seal, and every agreement contained in a deed is a covenant, for the reason that every deed is required to be sealed. Covenants may be either express or implied.

An express covenant contained in every deed is the covenant on the part of the grantor that he is lawfully seized and has a good right to convey the estate. Another important express covenant in a deed is that against incumbrances, such as unpaid taxes, easements, outstanding mortgages, etc. Incumbrances are of two kinds: (1) those which affect the title, and (2) those which affect the physical condition of the property. A covenant of quiet enjoyment is an assurance against a defective title and any disturbance thereunder. This covenant, in effect, has been practically superseded by the covenant of warranty, which is the most useful of all covenants. It guarantees the grantee against not only existing claims, but also such as may be presented

against the land in the future. The covenant of warranty is a personal obligation, and may be barred by the Statute of Limitations. The warranty contained in the ordinary deed is a special warranty.

Implied Covenants.

Certain covenants in a deed arise by implication. Thus two covenants are implied from the words "grant, bargain and sell:" (2) that of title in the grantor, and (2) that of quiet enjoyment.

The principal distinction in covenants is between real covenants and personal covenants, that is to say, between covenants which are said to run with the land and those which do not. As a matter of fact, all covenants are personal and bind the covenantor (the party making the covenant) personally; but some covenants are only personal, while some bind the lands in the hands of the heir or assignee of the covenantee the same as the covenantor. A real covenant may be defined as one which runs with the land and descends to the heir and is transferred to a purchaser. For example, a real covenant made by a grantee or lessee will not only bind such grantee or lessee, but also the assignee of said grantee or lessee, so that the grantor or lessor or their heirs could bring an action on the covenant at any time. Covenants of warranty, covenants to pay rent, covenants imposing restrictions upon building, the performance of which affect the nature, quality or value of the land conveyed, are illustrations of real covenants or those which run with the land. Covenants which run with the land may be implied as well as expressed.

Common Law Conveyances.

Conveyances are divided into two classes: (1) Original or primary, and (2) secondary or derivative. The first class includes those which create an estate in land; the second class are those which enlarge, restrain, transfer or extinguish an estate already created. The principal conveyances of the first class are gift, grant, lease, exchange and partition, feoffment having become obsolete. Secondary conveyances comprise release, confirmation, surrender, assignment and defeasance. It will only be necessary to explain a few of these conveyances, as the others have been covered heretofore.

An exchange is a mutual grant of equal interests, the one in consideration of the other. When an exchange of one property for another is desired, mutual deeds of bargain and sale, with the usual covenants of title, are preferred and adopted by modern conveyancers.

A partition is effected when two or more persons having unity of possession of real estate agree to divide the same, each having a distinct part.

A release is a conveyance of a man's right in real estate to one who had a former estate in possession thereof. The essential words in this conveyance are: "Remise, release and forever quit claim."

A confirmation is a conveyance of an estate whereby a voidable estate is made sure and unavoidable. Thus the deed of a minor which is voidable may be confirmed upon reaching majority.

The converse of a release is a surrender, which is that conveyance whereby a man yields up a less estate in possession to one who has a greater estate in remainder. For example, where a tenant for life gives his estate to the remainderman or reversioner, *i. e.*, to the party entitled to his estate upon his death.

An assignment is merely a transfer of an estate in lands, usually of a term of years, and is frequently used in transferring a ground rent or a bond and mortgage.

A defeasance is a collateral deed affixing conditions to an estate granted by another deed made at the same time.

Construction of Deeds.

Having considered the various kinds of deeds, the component parts thereof, and the manner of their execution, the subject cannot be concluded without a brief inquiry concerning the rules which regulate their construction.

The courts always aim to construe a deed favorably in order that it may take effect, if possible, and carry out the intention of the parties thereto. In determining the intention of the parties, the courts have much more consideration for the substance than for the form of deeds. Blots, bad spelling, bad grammar, etc., will not invalidate a deed; neither will erasures or interlineations, provided they are made before the deed was executed. A deed will be interpreted as a whole; that is, if a particular part is in dispute, its construction will be governed by that which precedes, as well as that which follows it. Another well-established rule of construction is that the words of a deed will always be taken most strongly against the party employing them. The existence of fraud in connection with a deed will invalidate it. A man who is in debt cannot give away his property except for a sufficient consideration. Even if the sale of real estate is for a full price, which is actually paid, if the object of the sale is to defraud creditors and the purchaser knows it and aids and assists the

plan, his title is worthless as against creditors. If, however, a sale is made without a present payment of money, but in payment of a prior debt which is honestly due, it will not be held fraudulent. Care should be exercised in making a conveyance without consideration, for as between the parties and those claiming under them such a conveyance will be valid.

It is a common custom in conveying property for the purpose of placing the same out of the reach of creditors to place the same in the name of the wife of the debtor. This practice, is, however, subject to certain risks. If a man, while insolvent, transfers his property to his wife, the presumption is that the husband furnished the means of payment and the law places the burden upon the wife, if her title is questioned by her husband's creditors, of proving that she paid for the property out of her own separate money.

Title by Matter of Record.

It has frequently occurred that title to real estate cannot be transferred for want of a person having capacity to convey the same. It has been the policy of modern legislation to free from all obstacles the transfer of title to real estate, and many statutes have been passed conferring upon our courts jurisdiction and power to order the sale of lands which could not otherwise be transferred. An important item, therefore, under the general head of title by matter of record, is judicial sales, which includes sales under execution and sales by order of court. Our constitution declares that private property shall not be taken from one in lawful possession thereof, without due process of law, which means a judgment rendered in due course of the administration of law. The judicial power being vested by the constitution in the courts of law, only a court of law can render such a judgment. By special constitutional provision, the legislature may take private property for public uses upon making proper compensation, which right is known as the right of eminent domain.

Innumerable titles to real estate are acquired by sheriff's sales. It is impossible in a course of this character to indicate the various ways in which a sheriff's sale may be brought about, but it is very important to a real estate man to know how to judge the validity of a title which has been conveyed by a sheriff by deed duly acknowledged in open court, and entered upon the records according to law.

It may be stated as a general rule that the acknowledgment and delivery of a sheriff's deed cures all irregularities and estab-

lishes good title to the property sold. A sheriff's sale to be valid must be based upon a judgment in a court having proper jurisdiction, and must be free from collusion and fraud. The title which a purchaser at sheriff's sale acquires is that which the defendant in the judgment had at the time the execution was levied. His title is not affected by a prior unrecorded deed, and he is not affected by any secret trusts of the existence of which he was ignorant. Upon a sheriff's sale of real estate for taxes or municipal claims, the owner has the right to redeem by paying the purchaser all his costs and charges and the purchase money with penalty added thereto, fixed by local law.

Besides sheriff's sales, the courts of common pleas and orphans' court have power to decree the sale of real estate under certain circumstances, and in such case it is the court which makes the conveyance, and it is hence immaterial whether or not the person who signs the deed has legal capacity to do so. If the circumstances are such as to convince the court that a sale ought to be made, scarcely a case can arise where the power to sell and convey real estate is wanting that such power cannot be supplied by the order of a court.

The subject of real estate cannot be properly concluded without a consideration of title by devise, or that title to lands which is created by will, being the last method whereby title to real estate may be acquired by purchase.

When real estate is transferred by a will it is called a devise; when personal property is transferred, it is called a bequest.

The two principal characteristics of a will are: (1) That it cannot take effect before the death of the testator or maker, and (2) it is revocable any time before death.

Wills may be either unwritten or written. An unwritten will, known as a nuncupative will, is one made by word of mouth and can only effect a disposition of personal property. It is further required that an unwritten will, to be valid, must be made during the last illness of the testator. If the property is in the form of money, and exceeds in amount one hundred dollars, it must be proved that the testator when he pronounced the bequest bid those present to witness that such was his last will. Two competent witnesses are necessary to prove an unwritten will.

Unless a person is prevented from making a will in writing by the extremity of his last illness, a will must be made in writing.

Every person of sound mind who is twenty-one years of age or upward may make a will. Every will must be signed by the maker at the end thereof, or by some person in his presence and

by his express direction. The rule that every will must be in writing as regards devises of real estate is without any exception.

Whatever its form, an instrument which passes no present interest and is to take effect on the death of the maker is testamentary in character and can be operative only as a will and as such only when it is executed with the formalities necessary to the execution of a will. An instrument which passes a present interest is not a will even though enjoyment of such interest is postponed until after the death of the maker.

A will transferring real estate cannot be revoked or altered except by a will or codicil (addition to a will) executed and proved like a will, unless the testator burns, destroys or cancels the same.

Abstract of the Laws of all the States and Territories Relating to Deeds and Their Requirements.

Alabama.—Every deed must be in writing or printed, and on parchment or paper, signed at the foot and attested by a witness, acknowledged, and recorded. If they purport on their face to be sealed instruments, they have such force.

Alaska.—Deeds must be signed and sealed by the person from whom the interest is intended to pass, and acknowledged or proved and recorded. No words of inheritance are necessary to pass the fee. Property cannot be held in joint tenancy.

Arizona.—Deed must be in writing, signed and delivered, acknowledged, and recorded.

Arkansas.—Deeds are construed to pass the whole estate of the grantor in the property conveyed, unless specially limited. They must be acknowledged or proved by two subscribing witnesses. If duly acknowledged no witnesses are necessary. Private seals are abolished.

California.—Deeds are known as "grants." They pass the whole title in fee simple, unless an express reservation is made, and must be signed and acknowledged or proved, and recorded in the office of the recorder for the county where the land is situated. Seals and witnesses are not required. The Torrens system of registration and certification of land titles has been adopted.

Colorado.—The whole estate conveyed passes, unless there is an express limitation. The deed must be acknowledged, and recorded in the county where the land is situated. No witnesses are required. Seals are abolished. The Torrens system of registration and certification of land titles has been adopted.

Connecticut.—The deed must be in writing, signed, sealed, and acknowledged by the grantor, attested by two witnesses, and it must be recorded in the clerk's office of the town where the lands lie. A scroll answers for a seal.

Delaware.—A deed must be acknowledged, and recorded in the office for the county where the land lies within three months. Only one witness is necessary, and a scroll answers for a seal.

District of Columbia.—Deeds are usually witnessed, although not required by statute to be so. They must be acknowledged and recorded. Notice dates from time of receipt for record. A scroll answers for a seal, except for corporations, deeds of which must be executed under corporate seal, signed by an officer and acknowledged by an attorney under power of attorney, embodied in or separate from the deed.

Florida.—Deeds must be in writing, sealed and delivered in presence of at least two witnesses; must be acknowledged before a proper officer, and recorded in the county where the land is situated. Deeds destroyed by fire may be re-recorded under certain conditions. A scroll answers for a seal. Deed from husband to wife is valid.

Georgia.—A deed must be in writing, signed and sealed by the grantor, attested by at least two witnesses, acknowledged before the proper officer, and recorded in the clerk's office of the superior court for the county where the land lies. Mortgages must have one witness. A scroll answers for a seal. The fee passes unless there are limiting words.

Idaho.—Deeds pass all the estate of the grantor without using the word "heirs," unless a different intention is expressed. They must be in writing, acknowledged, and recorded. No witness is required. A scroll answers for a seal. The Torrens system of registration and certification of land titles has been adopted.

Illinois.—Deeds convey the whole interest, unless there be a limitation; must be acknowledged and recorded in the county where the land is situated. No witnesses are required, and a scroll answers for a seal.

Indiana.—The word "heirs" is not necessary in deeds, and seals and scrolls are abolished. The deed must be in writing, signed and acknowledged, and recorded in the county where the lands are. Assignments of mortgage must be recorded within forty-five days. Witnesses are not necessary.

Iowa.—Every deed passes the grantor's whole interest, unless a contrary intent appears. Seals are not necessary, neither are witnesses. Deeds must be acknowledged before a judge or clerk of a court having a seal, a notary public, county auditor, or justice of the peace, and recorded in the county where the lands lie.

Kansas.—Deeds must be in writing, subscribed by the grantor, or his agent or attorney, acknowledged and recorded in the county where the land is. Private seals, except of corporations, are abolished. Witnesses are not required. The entire estate passes unless the grant is expressly limited.

Kentucky.—The deed must be in writing, and should be acknowledged, and recorded in the office of the clerk of the court for the county where the land is; if not acknowledged, it may be proved by two subscribing witnesses. Seals are abolished. The entire estate passes unless the grant is expressly limited.

Louisiana.—Deeds should be acknowledged and attested by the person taking the acknowledgment and two male witnesses, and should be recorded in the parish where the property is. No seal or scroll is necessary.

Maine.—Deeds must be in writing, signed, sealed, and acknowledged by the grantor, or if there be more than one grantor then by one of them, and recorded in the county where the land is. No witnesses are required.

Maryland.—All deeds must be signed and sealed. They require at least one witness, and must be acknowledged and recorded within six months in the county where the lands lie. A scroll answers for a seal. The entire fee passes unless a contrary intent appears.

Massachusetts.—Conveyances are made in writing, signed and sealed by the grantor or his attorney and acknowledged by the grantor, or if there be more than one grantor then by one of them and recorded in the county where the lands lie. No witnesses are necessary. A scroll is not sufficient. The entire estate passes unless the conveyance is expressly limited. The Torrens system of land title registration and certification has been adopted.

Michigan.—Deeds must be signed and sealed, and witnessed by at least two persons, and acknowledged and recorded in the county where the property is. A scroll answers for a seal.

Minnesota.—Two witnesses are necessary to every deed. It must be acknowledged and recorded in the county where the land is. Private seals are abolished. Words of inheritance are not necessary in order to pass the fee.

Mississippi.—Deeds must be acknowledged, or proved by one or more of the subscribing witnesses, and recorded in the office of the clerk of the chancery court for the county where the lands are. If the deed is not acknowledged, two witnesses are necessary. A seal is not required. Actual possession and occupancy by the grantee of property conveyed is equivalent to record.

Missouri.—Witnesses are not necessary. The deed should be signed, acknowledged, and recorded in the county where the land is. It need not be under seal unless executed by a corporation.

Montana.—Deeds must be in writing, signed by the grantor, and acknowledged or proved by subscribing witness, and recorded. Private seals are abolished. The entire estate passes unless the grant is expressly limited. Witnesses are not necessary.

Nebraska.—The deed must be signed in the presence of at least one witness, who must also subscribe as such, and acknowledged or proved, and recorded in the county where the land is. Seals are abolished.

Nevada.—Deeds must be signed, acknowledged, and recorded in the county where the land is. Witnesses are unnecessary. A seal is not necessary except when the grantor is a corporation.

New Hampshire.—Deeds must be signed, sealed, acknowledged, attested by one or more witnesses, and recorded in the county where the land is. A scroll is not sufficient.

New Jersey.—Deeds must be signed, sealed, acknowledged, and recorded in the county where the land is. A scroll is sufficient and witnesses are not necessary, though one is usually taken.

New Mexico.—Deeds must be signed by the grantor, acknowledged, and recorded.

New York.—Every deed must be subscribed, and if not duly acknowledged previous to its delivery, must be attested by at least one witness. A seal is not necessary. It must be acknowledged before the proper officer, and recorded in the county where the land is. The Torrens system of land title registration and certification has been adopted.

North Carolina.—A scroll answers for a seal. Deeds must be acknowledged or proved by one or more witnesses, and recorded in the county where the land is.

North Dakota.—Deeds must be signed by the grantor, acknowledged and recorded. Witnesses and seals are unnecessary.

Ohio.—Deeds must be in writing, signed, acknowledged in the presence of two attesting witnesses before the proper officer, and recorded in the county where the land is. No seal is necessary.

Oklahoma.—Deeds must be signed by the grantors, acknowledged, and recorded. Witnesses and seals are unnecessary.

Oregon.—Deeds must be signed, acknowledged, and recorded in the county where the land is. The Torrens system of land title registration and certification has been adopted.

Pennsylvania.—The deed must be signed, sealed, and acknowledged, and recorded in the county where the property is within ninety days, except in Philadelphia where recording must be done at once. Deeds executed out of the state must be recorded within six months. One or more witnesses are usually taken, but are not required. A scroll answers for a seal.

Rhode Island.—The deed must be in writing, signed, delivered, acknowledged, and recorded in the office of the clerk or recorder of deeds of the town or city where the property is. Witnesses are not essential. Private seals are abolished.

South Carolina.—The deed must be in writing, signed, sealed, and acknowledged, and recorded in the county where the land is. Two witnesses are necessary. If recorded within forty days from date, it is notice from its date, otherwise only from the date of record.

South Dakota.—Deeds must be signed by the grantor, acknowledged and recorded. Witnesses and seals are unnecessary.

Tennessee.—Deeds must be acknowledged by the grantor, or proved by two witnesses, and registered in the county where the land lies. If acknowledged by grantor, no witness is necessary. Seals are abolished.

Texas.—The deed must be signed and acknowledged, or proved by two witnesses, and recorded in the office of the clerk of the county court where the land lies. Seals are not necessary.

Utah.—Deeds must be signed by the grantor, acknowledged, or proved and recorded. A seal is unnecessary.

Vermont.—Deeds must be signed and sealed in the presence of two witnesses, acknowledged, and recorded in the clerk's office of the town or city where the property is. A scroll is sufficient, except for corporations, which must have a seal.

Virginia.—A deed must be signed and sealed by the grantor, acknowledged or proved by two witnesses, and recorded in the office of the county clerk of the county where the land lies. A scroll is sufficient.

Washington.—The deed must be in writing, signed by the grantor, acknowledged, and recorded. The use of private seals is abolished. The Torrens system of land title registration and certification has been adopted.

West Virginia.—Deeds must be executed, acknowledged or proved by two witnesses, and recorded in the county where the land is. Witnesses are not required when deed is acknowledged.

Wisconsin.—Deeds must be signed and sealed in presence of two witnesses, acknowledged, and recorded in the county where the lands are. A scroll answers for a seal.

Wyoming.—Deeds must be signed by the grantor in the presence of one witness, acknowledged, and recorded.

COMMON FORM OF A WARRANTY DEED

(Pennsylvania Form)

THIS INDENTURE, *made the day of* , *in the year of our Lord one thousand nine hundred and* , *between John Jones, of the City of Pittsburgh, in the State of Pennsylvania, ironmonger, and Mary, his wife, of the one part, and William Burns, of Birmingham, in the County of Allegheny, and state aforesaid, of the other part;* WITNESSETH, *that the said John Jones and Mary, his wife, for and in consideration of the sum of dollars, to them in hand paid by the said William Burns, at and before the ensealing and delivery hereof, the receipt whereof they do hereby acknowledge, have granted, bargained, sold, aliened, released, and confirmed, and by these presents, do grant, bargain, sell, alien, release, and confirm unto the said William Burns, and to his heirs, and assigns, all that certain messuage or tenement and tract of land, situated in Fayette Township, in the County of Allegheny, and state aforesaid, bounded as follows, viz:*—BEGINNING *at a birch; thence by land of Samuel Stone, south one hundred perches to a beech; thence by land of Thomas Brown, east eighty perches to a post; thence by land of same, north one hundred perches, to a sugar-tree; thence by land of Charles Dean, west eighty perches to the place of*

beginning, containing fifty acres, neat measure (or otherwise as the case may be). *It being the same premises* (or part of the same) *which Richard Rice, and Mary, his wife, by indenture bearing date the day of A. D. one thousand nine hundred and , for the consideration therein mentioned, did grant and confirm to the said John Jones (party hereto), his heirs and assigns for ever; as in and by the said in part recited indenture, recorded in the office for the recording of deeds, at Pittsburgh, in and for the County of Allegheny, in Deed-book M, vol. 2, page 341, etc., relation being thereunto had, more fully and at large, appears.* (Here may be inserted the whole chain of title.) TOGETHER *with all and singular the rights, liberties, privileges, hereditaments, and appurtenances whatsoever thereunto belonging, or in any wise appertaining* (if there be any exceptions, here insert them), *and the reversions and remainders, rents, issues, and profits thereof; and also, all the estate, right, title, interest, property, claim, and demand whatsoever, of them, the said John Jones and Mary his wife, in law, or equity, or otherwise howsoever, of, in, to, or out of the same. To have and to hold the premises hereby granted, or mentioned, or intended so to be, with the appurtenances* (if there be any exceptions insert them here, as before), *unto the said William Burns, his heirs and assigns, to the only proper use and behoof of the said William Burns, his heirs and assigns, for ever.* (Here insert any covenants that may be desired.) *And the said John Jones, for himself, his heirs, executors, and administrators, doth covenant, promise, and agree, to and with the said William Burns, his heirs and assigns, by these presents that he, the said John Jones, and his heirs, the said above mentioned and described messuage or tenement, and tract or piece of land, hereditaments and premises hereby granted, or mentioned, or intended so to be, with the appurtenances, unto the said William Burns, his heirs, assigns, against him, the said John Jones, and his heirs, and against all and every other person and persons whomsoever, lawfully claiming or to claim the same or any part or parcel thereof (by, from or under them, or any of them), shall and will warrant and for ever defend by these presents.*

IN WITNESS WHEREOF, *the said parties of the first part to these presents have hereunto set their hands and seals, the day and year first above written.*

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF: } [L.S.] [L.S.]

DEED BY EXECUTORS, BY AUTHORITY IN A WILL

THIS INDENTURE, *made the day of , in the year of our Lord one thousand nine hundred and , between Abraham Brown and Charles Davis, of , Executors of the last will and testament of Edward Fraley, late of , of the one part and George Hughes, of , of the other part:* WHEREAS, *the said Edward Fraley, by virtue of divers goods, conveyances and assurances in law, duly had and executed, became in his lifetime seized in his demesne, as of fee (amongst other lands), of and in a certain messuage or tenement and tract of land, situate in the Township of , in the County of aforesaid, containing one hundred acres, be the same more or less; and being so thereof seized, made his last will and testament in writing, bearing date the day of , A. D. one thousand nine hundred and , wherein and whereby, amongst other things, he ordered that the whole of his real estate should be sold by his Executors thereinafter named, of which said will he appointed Abraham Brown and Charles Davis Executors, as in and by the said recited will, since his decease duly proved, and remaining in the Register's office at , recourse being thereunto had, appears;* NOW THIS INDENTURE WITNESSETH, *that the said Abraham Brown and Charles Davis, Executors as aforesaid, for and in consideration of the sum of dollars, to them in hand paid by the said George Hughes, at and before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, released, and confirmed, and by these presents, by force and virtue of the said last recited will, do grant, bargain, sell, alien, release, and confirm, unto the said George Hughes all that above-mentioned and described messuage, &c., bounded and described as follows: beginning, &c.* (Here describe the premises.) TOGETHER *with all and singular the rights, liberties, privileges, hereditaments, and appurtenances whatsoever, thercunto belonging or in any wise appertaining, and the reversions and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, property, claim, and demand whatsoever of the said Edward Fraley at and immediately before the time of his decease, in law or equity, or otherwise howsoever, of, in, to, or out of the same. To have and to hold the said messuage or tenement and tract of one hundred acres of land, hereditaments, and premises hereby granted or mentioned, or intended so to be, with the appurtenances, unto the said George Hughes, his heirs and assigns, to the only proper use and behoof of the said*

George Hughes, his heirs and assigns, for ever. (*And the said Abraham Brown and Charles Davis, Executors aforesaid, for themselves, their heirs, executors, and administrators, do severally, and not jointly, nor the one for the other, or for the act or deed of the other, but each for his own acts only, covenant, promise, and agree to and with the said George Hughes, his heirs and assigns, by these presents, that they, the said Abraham Brown and Charles Davis have not heretofore done or committed any act, matter, or thing whatsoever, whereby the premises hereby granted, or any part thereof, is, are, or shall or may be impeached, charged, or encumbered in title, charge, estate, or otherwise howsoever.*)

In Witness Whereof, *&c.*

SHORT FORM OF DEED BY HUSBAND AND WIFE, CONTAINING NO CLAUSE OF WARRANTY

This Indenture, *made the day of , A. D. one thousand nine hundred and , between A. B., of , and M. his wife, of the first part, and C. D., of , of the second part:* Witnesseth, *that the said party of the first part, in consideration of dollars, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged by the party of the first part, do give, grant, sell, and convey unto the said party of the second part all that, &c.* (here describe the premises fully, and insert recitals of title).

Together *with all and singular the rights, liberties, privileges, hereditaments, and appurtenances whatsoever thereunto belonging, and the reversions and remainders, rents, issues, and profits, thereof; and also all the estate and interest whatsoever of them, the said party of the first part, in law or equity. To have and to hold the same to the party of the second part, his heirs and assigns forever.*

In Witness Whereof, *the said parties of the first part have hereunto set their hands and seals, the day and year first above written.*

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF: [L.S.] [L.S.]

DEED OF ASSIGNMENT BY PARTNERS

THIS INDENTURE, *made this day of , A. D. 19 , between co-partners, under the firm of , of the City of Philadelphia, parties of the first part, and , also of said city, party of the second part,* WITNESSETH, *that in consideration of the sum of one dollar to them the parties of the first part well and truly paid before the execution hereof by the party of the second part, the receipt whereof is hereby acknowledged, and for the purpose of securing among the creditors of the said parties of the first part an equal distribution of their property, the said parties of the first part have granted, bargained, and sold, aliened, enfeoffed, released, conveyed, confirmed, assigned, and set over, and by these presents do grant, bargain, and sell, alien, enfeoff, release, convey, confirm, assign, and set over unto the said party of the second part, his heirs and assigns, the partnership property, lease, fixtures, book-debts, and all the property and effects of the said firm of , and all the estate, real, personal, and mixed, of said parties of the first part, and each of them, wheresoever situate, and of whatsoever kind, to have and to hold the same and all proceeds thereof in trust for, and to make distribution of the same to and among the several creditors of the parties of the first part without any preference save that which may by law be allowed; saving and reserving at all times out of the estate hereby assigned such exemptions as are by law provided; and the parties of the first part hereby empower the party of the second part, in their names, to collect all debts, to sell all property, to make and deliver all deeds, bills of sale, conveyances, and other instruments necessary to carry this assignment into effect.*

IN WITNESS WHEREOF, *the said parties have hereto set their hands and seals the day and year first above written.*

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF: [L.S.] [L.S.]

SPENDTHRIFT TRUST DEED

THIS INDENTURE, *made the day of , in the year of our Lord one thousand nine hundred and , between John Easy, of the Township of , in the County of , and State of Pennsylvania, of the one part, and James Careful and George Faithful, of the Township of , in said county, of the other part;* WITNESSETH, *that the said John Easy, for and in consideration of the sum of one dollar unto him in hand paid by the said James Careful and George Faithful, at and before the ensealing and delivery hereof, the receipt whereof is hereby acknowledged, and for the purpose of preserving his property and estate for the support of himself, and the support and education of his children, hath granted, bargained, sold, assigned, transferred and set over, and doth hereby grant, bargain, sell, assign, transfer and set over unto the said James Careful and George Faithful, and to their heirs, executors, administrators and assigns, all the real estate of which he, the said John Easy, is now seized or possessed, or in any manner entitled to, whether in possession, remainder or reversion, and wheresoever situate, and all his right, title and interest therein; and also all his personal property, goods, chattels and credits of every description whatever or wheresoever the same are or may be found:* TO HAVE AND TO HOLD, *receive and take the same and every part thereof, to them, the said James Careful and George Faithful, their heirs, executors, administrators and assigns forever:* IN TRUST, *nevertheless, that they will collect all outstanding debts and credits due to him, the said John Easy, that they will sell and convert into money all his personal property, except such articles of household goods as they, in their discretion, may allow him to retain; that they will sell and convey said real estate in fee simple, or for such other estate as he, the said John Easy, now hath therein, at such time or times, and altogether, or in such part or parts as they may see fit, and that until such sale or sales they will rent the same, and collect and receive the rents, issues and profits thereof; that they will, from the proceeds of said personal property, and the rents, issues and profits of said real estate and the proceeds thereof when sold, first fully pay and discharge all the just debts now due or owing by or from the said John Easy; that they will invest the balance thereof then remaining at interest in such good securities as they may approve, and with power, from time to time, to change such investments as they may see fit, and collect and receive the interest arising therefrom; that they will apply the said rents, issues and profits, and the interest arising from said invest-*

ments, and also so much of the principal thereof as they may think necessary and proper from time to time, and as often and in such manner and in such proportions to each as they, in their discretion, may think right and best, to the comfortable support of him, the said John Easy, and to the comfortable support and the education of his children during the whole period of the natural life of him, the said John Easy; and so that neither the said real estate or personal property, nor the rents, issues and profits, interest or income arising therefrom or any part thereof, shall or may, at any time hereafter, be liable or subject in any manner whatever, to the control, engagements, debts or liabilities of him, the said John Easy, or of his said children or any of them; and that they will, as soon as conveniently may be after the death of the said John Easy, sell and convey the said real estate, if the same or any part thereof then remain unsold, and shall also collect and receive the principal amount of said investments, and that from the proceeds of said sales and the principal of said investments, and from any unexpended interest or income then remaining in their hands, shall pay the expenses of the decent and proper interment of him, the said John Easy, and that they will then pay and distribute the whole remaining balance of the said trust fund remaining in their hands to and among the heirs of the said John Easy, in such proportions or shares as is directed by the laws of the Commonwealth of Pennsylvania for the distribution of the personal property of intestates; PROVIDED, *however, nevertheless, that if at any time hereafter during the life of the said John Easy, it shall in the opinion of the said James Careful and George Faithful, or of the survivor of them, or of their successors or successor in their said trust, become safe and proper and conducive to the happiness, prosperity and best interests of the said John Easy, to pay and reconvey to him the said property and estate, then, and in that case, it shall and may be lawful for them so to do, and upon the same being done they shall become released and discharged from any and all liability therefor or on account thereof, and he, the said John Easy, shall thereafter have and hold the same free and discharged from said trust as fully and effectually as if this present indenture had never been made.*

IN WITNESS WHEREOF, *the said parties to these presents have hereunto interchangeably set their hands and seals, dated the day and year first above written.*

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF US: [L.S.] [L.S.]

DEED OF CONFIRMATION

KNOW ALL MEN BY THESE PRESENTS, *That I, John Jones, of , in County, and State of Pennsylvania, in consideration of the sum of dollars, to me in hand paid by William Burns, the receipt whereof is hereby acknowledged, have granted, bargained, sold, ratified, and confirmed, and by these presents do grant, bargain, sell, ratify, and confirm, unto the said William Burns, his heirs and assigns, forever, all the estate which I have in the messuage, with the appurtenances, in , in the County aforesaid, now in the possession and occupation of the said William Burns.* TO HAVE AND TO HOLD *the same unto him, the said William Burns, and his Heirs and assigns, for ever.*

IN WITNESS WHEREOF, *&c.*

DEED FROM A CORPORATION

THIS INDENTURE, *made the day of , A. D. one thousand nine hundred and , between the Corporation by the name, style, and title of "The President, Directors, and Company of the Bank of Pennsylvania," of the one part, and C. D., of the City of Philadelphia, in the State of Pennsylvania, Gentleman, of the other part:* WITNESSETH, *that the said The President, Directors, and Company of the Bank of Pennsylvania, for and in consideration of the sum of dollars, lawful money of the United States, to them in hand paid by the said C. D. at the time of the execution hereof, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, aliened, enfeoffed, released, and confirmed, and by these presents do grant, bargain, and sell, alien, enfeoff, release, and confirm unto the said C. D., and to his heirs, and assigns, all that piece or parcel of land situated, &c.* (Here describe the land and give the chain of title.) TOGETHER *with all and singular the buildings, privileges, hereditaments, and appurtenances whatsoever thereunto belonging, or in any wise appertaining, and the reversions and remainders, rents, issues, and profits thereof; and all the estate, right, title, interest, property, claim, and demand whatsoever of them, the said The President, Directors, and Company of the Bank of Pennsylvania, either in law or equity, of, in, and to the same.* TO HAVE AND TO HOLD *the said messuage or tenement and lot or piece of ground above described, hereditaments,*

and premises hereby granted, bargained, and sold, or mentioned, or intended so to be, with the appurtenances, unto the said C. D., his heirs and assigns, to and for the only proper use and behoof of him, the said C. D., his heirs and assigns, forever. And the said The President, Directors, and Company of the Bank of Pennsylvania for themselves and their successors, do hereby covenant and agree to and with the said C. D., his heirs and assigns, that they, the said The President, Directors, and Company of the Bank of Pennsylvania and their successors, all and singular the said hereby granted premises, with the appurtenances, unto the said C. D., his heirs and assigns, against them, the said The President, Directors, and Company of the Bank of Pennsylvania and their successors, and against all and every other person and persons whomsoever lawfully claiming or to claim by, from, or under them, or any of them, shall and will warrant and for ever defend by these presents.

[Corporate Seal.] IN TESTIMONY WHEREOF, *the said The President, Directors, and Company of the Bank of Pennsylvania have hereunto affixed the common seal of their said corporation at Philadelphia, the day and year first before written.*

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF US:

President.

Received the day of the date of the above-written indenture, of the above-named C. D., the sum of dollars, being the full consideration money above mentioned.

For The President, Directors, and Company of the Bank of Pennsylvania.

E. F.,
Cashier.

QUITCLAIM DEED

KNOW ALL MEN BY THESE PRESENTS, *That I, John Jones, of the Borough of , in the County of , and State of Pennsylvania, for and in consideration of the sum of dollars, to me in hand paid, or secured to be paid, by William Burns, of , and state aforesaid, the receipt whereof is hereby acknowledged, have remised, released, and quitclaimed, and by these presents do remise, release, and quitclaim unto the said William Burns, and to his heirs, and assigns, forever, all that, &c.* (here describe the premises); TOGETHER

with all and singular the hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the reversions, remainders, rents, issues, and profits thereof; and all the estate, right, title, interest, claim, or demand whatsoever of me, the said John Jones, either in law or equity, of, in, and to the above-bargained premises. TO HAVE AND TO HOLD *the same to the said William Burns, and to his heirs and assigns, forever.*

IN WITNESS WHEREOF, *&c.*

NEW JERSEY DEED

THIS INDENTURE, *made the day of in the year of our Lord one thousand nine hundred and (19), between , of the first part, and , of the second part:* WITNESSETH, *That the said party of the first part, for and in consideration of the sum of , lawful money of the United States of America, well and truly paid by the said party of the second part to the said party of the first part, at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, enfeoffed, released, conveyed and confirmed, and by these presents doth grant, bargain, sell, alien, enfeoff, convey and confirm unto the said party of the second part, his heirs and assigns, all* (describe property)*;* TOGETHER *with all and singular, the buildings, improvements, woods, ways, rights, liberties, privileges, hereditaments and appurtenances, to the same belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and of every part and parcel thereof; And also, all the estate, right, title, interest, property, possession, claim, and demand whatsoever, both in law and equity, of the said party of the first part, of, in, and to the said premises, with the appurtenances.*

TO HAVE AND TO HOLD *the said premises, with all and singular the appurtenances, unto the said party of the second part, his heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever.*

AND *the said , his heirs, executors, and administrators, doth by these presents, covenant, grant and agree, to and with the said party of the second part, his heirs and assigns, that he, the said , and his heirs, all and singular the hereditaments and premises herein above described and granted, or mentioned and intended so to be, with the appurtenances, unto the said party of the second part, his heirs and assigns, against*

him, the said , his heirs and against all and every other person or persons whomsoever lawfully claiming or to claim the same or any part thereof shall and will warrant and forever defend.

IN WITNESS WHEREOF, *the said party of the first part to these presents hath hereunto set his hand and seal. Dated the day and year first above written.*

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF: } [L.S.] [L.S.]

State of New Jersey } *County* } *ss:*

BE IT REMEMBERED, *That on this day of , in the year of our Lord one thousand nine hundred and , before me, personally appeared , who, I am satisfied, is the grantor mentioned in the above Deed or Conveyance, and I having first made known to him the contents thereof, he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed; and the said , being of full age, on a private examination apart from her said husband before me acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, freely, without any fear, threats or compulsion of her said husband. All of which is hereby certified.*

TRUSTEE'S DEED

THIS INDENTURE, *Made the day of in the year of our Lord one thousand nine hundred and*
BETWEEN
of the one part, Grantor , and of the other part, Grantee ,
WITNESSETH, *That the said Grantor for and in consideration of the sum of lawful money of the United States of America, unto well and truly paid by the said Grantee at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged granted, bargained, sold, aliened, released and confirmed, and by these presents*

grant, bargain, sell, alien, release and confirm unto the said Grantee and Assigns

TOGETHER *with all and singular the improvements ways, streets, alleys, passages, waters, water-courses, rights, liberties, privileges, hereditaments and appurtenances whatsoever thereunto belonging, or in any wise appertaining, and the Reversions and Remainders, Rents, Issues and Profits thereof; and all the estate, right, title, interest, use, trust, property, possession, claim and demand whatsoever of*

, in law, equity, or otherwise howsoever, of, in, and to the same and every part thereof

TO HAVE AND TO HOLD *the said hereditaments and premises hereby granted, or mentioned and intended so to be, with the appurtenances, unto the said Grantee and Assigns, to and for the only proper use and behoof of the said Grantee and Assigns for ever.*

AND *the said* DO *by these presents, covenant, promise and agree to and with the said Grantee and Assigns, that the said ha not done, committed, or knowingly or willingly suffered to be done or committed, any act, matter or thing whatsoever whereby the Premises hereby granted or any part thereof, is, are, shall or may be impeached, charged or incumbered, in title, charge, estate, or otherwise howsoever.*

IN WITNESS WHEREOF, *&c.*

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF US: }

RECEIVED *the day of the date of the above Indenture of the above named Grantee*

WITNESS AT SIGNING: }

ON THE *day of Anno Domini 19 , before me the subscriber, personally appeared*

POWER OF ATTORNEY TO SATISFY A MORTGAGE

State of
County of } *ss:*

KNOW ALL MEN BY THESE PRESENTS, *That* ,
of the *of* , *County*
of , *and State of* ,
do hereby certify that a certain Indenture of Mortgage, bearing date
the *day of* , *A. D. 19* , *made and*
executed by

of the *of* , *County*
of , *and State of* , *to secure*
the payment of
DOLLARS, and recorded in the office of the
Recorder of Deeds, etc., in and for said County of
in Mortgage Book , *Page* , *on the* *day of*
, *A. D. 19* , *the receipt of the payment thereof and satisfaction in full of debt and interest on the above-stated Mortgage*
do hereby acknowledge. And *do by these presents authorize the*
Recorder of Deeds in and for said County of *to enter satisfaction in full of the above-stated Mortgage and discharge the same from record.*

IN WITNESS WHEREOF, *have hereunto set* *hand and*
seal this *day of* , *A. D. 19*

State of
County of } *ss:*

in and for said County, personally came the above-named

personally known to me to be the person named in and who executed the above instrument, and acknowledged that he executed the same for the full intent and purpose therein mentioned, and desires the same to be recorded as such.

WITNESS *my hand and seal, this* *day of* , *A. D. 19*

[L.S.]

BOND

KNOW ALL MEN BY THESE PRESENTS, *That*

held and firmly bound unto

in the sum of
lawful money of the United States of America, to be paid to the said

certain Attorney, Executors, Administrators or Assigns; to which payment well and truly to be made,

Heirs, Executors and Administrators, firmly by these Presents. Sealed with
Seal Dated the day of in the year of our Lord one thousand nine hundred and

THE CONDITION OF THIS OBLIGATION IS SUCH, *That if the above-bounden*

Heirs, Executors, Administrators, or any of them, shall and do well and truly pay, or cause to be paid unto the above-named

certain Attorney, Executors, Administrators or Assigns, the just sum of

without any fraud or further delay; then the above Obligation to be void, or else to be and remain in full force and virtue.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF US: } [L.S.] [L.S.]

MORTGAGE

THIS INDENTURE, *Made the day of in the year of our Lord one thousand nine hundred and*
BETWEEN

of the other part.

WHEREAS, *the said in and by Obligation or Writing obligatory under*

hand and seal duly executed, bearing even date herewith stand bound unto the said

in the sum of

without any fraud or further delay, as in and by the said recited Obligation and the Condition thereof, relation being thereunto had may more fully and at large appear.

NOW THIS INDENTURE WITNSSETH, *That the said as well for and in consideration of the aforesaid debt or sum of*

and for the better securing the payment of the same, with interest, unto the said Executors, Administrators and Assigns, in discharge of the said recited Obligation as for and in consideration of the further sum of One Dollar unto in hand well and truly paid by the said at and before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, granted, bargained, sold, aliened, enfeoffed, released and confirmed, and by these presents grant, bargain, sell, alien, enfeoff, release and confirm unto the said

Heirs and Assigns,

TOGETHER *with all and singular Ways, Waters, Water-Courses, Rights, Liberties, Privileges, Improvements, Hereditaments and Appurtenances, whatsoever thereunto belonging, or in any wise appertaining, and the Reversions and Remainders, Rents, Issues and Profits thereof,*

TO HAVE AND TO HOLD *the said Hereditaments and Premises hereby granted, or mentioned and intended so to be, with the Appurtenances, unto the said*

Heirs and Assigns, to and for the only proper use and behoof of the said Heirs and Assigns, forever.

PROVIDED ALWAYS, *nevertheless, that if the said Heirs, Executors, Administrators or Assigns, do and shall well and truly pay, or cause to be paid, unto the said Executors, Administrators or Assigns, the aforesaid debt or sum of on the day and time hereinbefore mentioned and appointed for payment of the same,*

together with interest as aforesaid, without any fraud or further delay, and without any deduction, defalcation, or abatement to be made of any thing, for or in respect of any taxes, charges or assessments whatsoever, that then, and from thenceforth, as well this present INDENTURE, *and the estate hereby granted, as the said recited Obligation shall cease, determine and become void, any thing hereinbefore contained to the contrary thereof, in any wise notwithstanding.*

IN WITNESS WHEREOF, *the said part of the first part to these presents hereunto set hand and seal Dated the day and year first above written.*

SIGNED, SEALED AND DELIVERED [L. S.]
IN THE PRESENCE OF: [L. S.]

ASSIGNMENT OF BOND AND MORTGAGE

KNOW ALL MEN BY THESE PRESENTS
THAT

the Mortgagee named in the Indenture of Mortgage hereinafter mentioned, for and in consideration of the sum of lawful money unto paid by

at the time of the execution hereof, the receipt whereof is hereby acknowledged, DO *hereby grant, bargain, sell, assign, transfer and set over unto the said*

and assigns, ALL Indenture of Mortgage given and executed

ALSO *the Bond or Obligation in the said Indenture of Mortgage recited, and all Moneys, Principal and Interest, due and to grow due thereon.*

with the Warrant of Attorney to the said Obligation annexed. Together with all Rights, Remedies and Incidents thereunto belonging. And all Right, Title, Interest, Property, Claim and Demand, in and to the same:

TO HAVE, HOLD, RECEIVE AND TAKE *All and singular the hereditaments and premises hereby granted and assigned, or mentioned and intended so to be, with the appurtenances, unto*

and assigns, to and for only proper use, benefit and behoof forever; subject, nevertheless, to the equity of

redemption of said Mortgagor in the said Indenture of Mortgage named, and and assigns therein.

IN WITNESS WHEREOF,

SEALED AND DELIVERED IN THE PRESENCE OF US:

ON THE day of A. D. 19 , before me,

personally appeared the above-named and acknowledged the above Deed-Poll of Assignment of Mortgage to be act and deed, and desired the same might be recorded as such.

WITNESS *my hand and seal.*

ON THE day of Anno Domini 19 , before me, the subscriber, personally appeared of the said who being duly according to law, says that he was personally present at the execution of the above Deed-Poll of Assignment of Mortgage, and saw the common or corporate seal of the said Corporation duly affixed thereto; that the seal so affixed thereto is the common or corporate seal of the said Corporation; that the said Deed-Poll of Assignment of Mortgage was duly sealed and delivered by of the said Corporation, as and for the act and deed of the said Corporation, for the uses and purposes therein mentioned,

and that the names of this

as and of

as of the said Corporation, subscribed to the above Deed-Poll of Assignment of Mortgage in attestation of its due execution and delivery, are of their and each of their respective handwritings.

and subscribed before me, the day and year aforesaid. WITNESS *my hand and seal.*

NOTE.—In Pennsylvania an assignment of mortgage *must* be witnessed by *two* witnesses.

GENERAL LEASE

THIS INDENTURE, *Made the*
day of *in the year of our Lord*
one thousand nine hundred and
BETWEEN

who *hereinafter called the Lessor* *and*
who *hereinafter called*
the Lessee, WITNESSETH, *That the said Lessor* *for and in consideration of the payment of the rent*
and performance of the covenants and agreements hereinafter mentioned and contained, which on the part of the said Lessee
heirs, executors, administrators and assigns, is and are to be kept, done and performed, *demised, leased and to farm let, and by these presents* *demise, lease and to farm let, unto the said Lessee* *heirs, executors, administrators and assigns,* ALL THAT CERTAIN *Farm, Messuage, Tenement, Tract or Piece of Land situate*

TO HAVE AND TO HOLD *the said*
hereby demised, with the appurtenances, unto the said Lessee *heirs, executors, administrators and assigns, from the*
for and during the full end and term of
from thence next ensuing: YIELDING AND PAYING *therefor and thereout and delivering unto the said Lessor* *heirs and assigns, the yearly rent, the full* *part of*

with full power to the said Lessor
heirs and assigns, to recover the said yearly rent hereby reserved,
in the same manner that rents due upon leases now are, or hereafter shall be by law recoverable, with waiver of exemption under the Act of April 9th, 1849, or other acts of exemption subsequently passed, and for want of sufficient distress to satisfy the said yearly rent *and the charges of levying the same, then and in such case it shall and may be lawful for the said Lessor* *heirs and assigns, into and upon the said hereby demised premises,*
wholly to re-enter, and therefrom and thereout forthwith, without any further legal proceedings, to dispossess the said Lessee
heirs, executors, administrators and assigns, and the same to have again, repossess and enjoy, as in *first and former estate and title in the same, and as though this Indenture had never been made, any thing hereinbefore contained to the contrary notwithstanding.*

And the said Lessee heirs, executors, administrators and assigns, covenant, promise and agree, to and with the said Lessor heirs and assigns, by these presents, that the said Lessee heirs, executors, administrators or assigns, shall and will well and truly pay and yield and render the said yearly rent hereby reserved, and every part thereof, to the said Lessor heirs and assigns, on the days and times, and in the quotas and proportions hereinbefore mentioned and appointed for payment thereof, without any fraud or further delay, and

at the end of the said term, quietly and peaceably yield up and surrender the possession of the said to the said Lessor

And the said Lessor heirs, executors, administrators and assigns, hereby covenant, promise and agree, to and with the said Lessee heirs, executors, administrators and assigns, that the said Lessee heirs, executors, administrators or assigns, paying the said yearly rent, in manner aforesaid, and performing the covenants and agreements herein on part contained, shall and may peaceably and quietly have, hold, occupy, possess and enjoy, the said demised premises, with the appurtenances, during the said term, without any hindrance, molestation or eviction of the said Lessor heirs or assigns, or of any person or persons claiming under

And the said Lessee do hereby for and heirs, executors, administrators and assigns, covenant, promise and agree to and with the said Lessor heirs, executors, administrators and assigns, by these presents, in the following manner, to wit:

That will thresh out, deliver, and place the said Lessor share (winter and summer) as soon as threshed and cleaned in such bins as Lessor may designate, and the corn as soon as husked in cribs designated and shell the same when required by Lessor .

That the Lessee will haul the Lessor share of grain, oats, corn, hay and other products of the farm, and unload and deliver the same, in such manner and to such person and at such place or market, as the said Lessor may direct, not more than miles from the farm without charge.

That will not take or suffer to be taken from said premises, and will not sell or give away, or otherwise dispose of, any hay straw or corn-fodder upon or raised on said premises, nor suffer the same or any part thereof to be taken from said premises without consent in writing by Lessor , but shall properly use up the same upon said farm; that the right of property in the whole and every

part of said crops until set apart and divided, and of the manure, hay, straw and corn-fodder shall be absolutely and exclusively in said Lessor heirs and assigns; and Lessee shall have no right, title or interest in or power or control over said manure, hay, straw and corn-fodder, or any part thereof, except to apply and make use of the same upon and for the purpose, use and advantage of said farm, as herein provided, or as may be directed by Lessor,
pay taxes, state, national and local, except
said Lessee shall find timothy seed and clover seed and one-half of seed-grain
said Lessee shall have acre for exclusive use for The Lessee shall haul and spread manure, haul and spread lime

The Lessee shall repair, rebuild and keep up fences cutting and hauling the rails

the Lessor furnishing the posts and rails for entirely new fence shall not rent pasturage, nor keep more than horses, cows

keep premises in good order, fence-rows, ditches, and runs cleaned up and clear of weeds and bushes, and drains kept open.

The Lessor except and reserve thereout unto heirs and assigns, the full and free right and liberty of entry and re-entry, and of ingress and regress in, upon, into or through said premises, and every part thereof, at any and all times during said term, for the purpose of superintending, improving or viewing the same or of directing or examining the work or the condition of the repairs thereof, for the purpose of improving or amending the said premises, if desired by the Lessor , or for any lawful purpose or purposes whatever.

And reserve all timber-trees, with full and exclusive right to enter on the premises for cutting or hauling.

And reserve room sufficient in barn and farm buildings for storage of Lessor share of crops, with the right of access for the purpose of hauling the same away.

If Lessee shall not keep, observe, perform and fulfil the conditions, covenants and terms of this lease, then it shall cease and absolutely determine; and any attorney may immediately thereafter as attorney for said Leesee at the sole request of the Lessor , sign an agreement for entering in any court of competent jurisdiction, an amicable action of ejectment, with confession of judgment therein, in favor of the said Lessor and against the said Lessee , and all

persons claiming under for the immediate recovery for the said Lessor of possesion of the hereby demised premises, without any stay of execution, and with a release of all errors, and with costs of suit, and for all this, this shall be a sufficient warrant; and thereupon a writ of habere facias possessionem *may issue forthwith with release of errors in all proceedings thereon, or concerning the same; and the Lessee agree that no writ of error, exception or objection may be made thereto. No such determination of this lease, or taking possession of the premises shall deprive the Lessor of any action against the said Lessee for rent or damages.*

IN WITNESS WHEREOF, *have hereunto set hand and seal , the day of , one thousand nine hundred and*

SEALED AND DELIVERED IN THE PRESENCE OF:

[L.S.]

FORM OF WARRANTY DEED

Used in Iowa, Maine, Massachusetts, Nebraska, New Hampshire, North Carolina, Ohio, Oregon, Rhode Island and Vermont.

KNOW ALL MEN BY THESE PRESENTS, *That I, , of , in the State of , in consideration of dollars to me paid by of , the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell and convey unto the said all that parcel of land situate in said, and bounded as follows, etc.*

To have and to hold the granted premises, with all the rights, easements and appurtenances thereto belonging, to the said , his heirs and assigns, to his and their own use and behoof forever.

And I do hereby, for myself and my heirs, executors, and administrators, covenant with the said grantee, his heirs and assigns, that I am lawfully seized in fee of the granted premises; that they are free from all incumbrances; that I have good right to sell and convey the same as aforesaid; and that I will, and my heirs, executors, and administrators shall warrant and defend the same to the said grantee, his heirs and assigns, forever, against the lawful claims and demands of all persons.

And for the consideration aforesaid I, , of , wife of the said , do hereby release unto the grantee and his heirs and assigns all rights of or to both dower and homestead in the granted premises.

IN WITNESS WHEREOF, *we, the said and , hereunto set our hands and seals this day of , 19*

FORM OF QUITCLAIM DEED

Used in Iowa, Maine, Massachusetts, Nebraska, New Hampshire, North Carolina, Ohio, Oregon, Rhode Island and Vermont.

KNOW ALL MEN BY THESE PRESENTS, *That I, , of in the State of , in consideration of dollars to me paid by of the receipt whereof is hereby acknowledged, do hereby remise, release, and forever quitclaim unto the said all that parcel of land situate in said , and bounded as follows, etc.*

To have and to hold the granted premises, with all privileges and appurtenances thereto belonging, to the said and his heirs and assigns, to their own use and behoof forever.

And I do hereby, for myself and my heirs, executors, and administrators, covenant with the said grantee and his heirs and assigns, that the granted premises are free from all incumbrances made or suffered by me, and that I will, and my heirs, executors and administrators shall warrant and defend the same to the said grantee and his heirs and assigns forever against the lawful claims and demands of all persons claiming by, through, or under me.

And for the consideration aforesaid I, , of , wife of the said , do hereby release unto the said grantee and his heirs and assigns all rights of or to both dower and homestead in the granted premises.

IN WITNESS WHEREOF, *we, the said and hereunto set our hands and seals this day of 19*

NOTICE BY TENANT TO LANDLORD

IN EXERCISE OF THE POWER *reserved to me by a certain indenture of lease bearing date on the day of and made between yourself of the one part and myself of the other part, and whereby the premises therein demised to me for the term of twenty-one years from the day of , 19 , are determinable as therein mentioned, I hereby give you notice that it is my intention to determine the said lease at the expiration of the first years thereof, which will expire on the day of next, on which day I shall quit and deliver up to you the possession of the buildings and lands therein comprised.*

FARM LEASE

THIS INDENTURE, *Made the day of , A. D. one thousand nine hundred and ,*
BETWEEN
(hereinafter called the Lessor) of the one part and
(hereinafter called the Lessee) of the other part,
WITNESSETH, *That the said Lessor for and in consideration of the rents, covenants and agreements hereinafter mentioned, on the part of the Leesee , to be paid, kept and performed, doth by these presents demise, lease and to farm let, unto the said Lessee,* ALL THAT

TO HAVE AND TO HOLD *the same unto the said Lessee for the term of commencing on the day of A.D. 19 , at the rent or sum of to be paid as follows:*

AND *the said Lessee as security for the payment of the rent falling due under this lease, hereby grants, bargains and sells to the said Lessor , all stock, farming utensils and machinery, crops and other personal property upon said demised premises during said term, and should default be made in the payment of any part of said rent for days after any payment thereof shall fall due, the said Lessor may, at his option, take possession of said stock, farming utensils, machinery, crops and other personal property, and sell the same at public sale on five days' notice, the said Lessee hereby waiving the benefit of all laws exempting the same, or any part thereof, from levy or sale to satisfy the said rent and costs; and should any of the said goods and property be removed from said premises, the Lessor may follow the same and levy upon and take possession wherever found, at any time within ninety days after such removal, and proceed to sell the same as aforesaid, to satisfy any or all rent that may be in arrear, together with necessary costs and expenses.*
AND *the said Lessee shall not and will not at any time or times during said term sell, remove, give away or otherwise dispose of any straw, fodder or manure.*
which may be upon the premises at the commencement of said term, or which shall grow or be grown, produced or made thereon during the continuance thereof, but the whole of said straw, fodder and manure

shall be left upon the said premises or employed in the improvement or cultivation thereof:
It is further agreed that the Lessee shall plow, break up and farm the following fields, to wit:

And the Lessee further agrees to farm and till the said demised premises and manage the same in a good and husbandlike manner; to keep in good repair all the buildings and fences thereon, keep from wilful or negligent hurt all fruit, ornamental or other trees or plants on said premises, destroy all noxious weeds from time to time, and at the end of said term deliver up the same in like good order and conditions as they now are in, reasonable wear and tear and damage by accidental fire or unavoidable accidents excepted. The said Lessee shall have, free of charge, so much firewood as may be necessary for family use, the same to be taken from such fallen timber as may be suitable for that purpose. If sufficient timber cannot be found, he shall cut down only such trees as the Lessor may point out; and such other timber as may be required for repairing or renewing fences or buildings shall only be cut after the Lessor shall have consented to and selected the same.

The said Lessee shall not do or commit or willingly suffer to be done or committed, any act, matter or thing whereby or in consequence whereof the fire insurance on the demised premises shall become avoided or suspended; nor shall he sublet the demised premises, or any part thereof, for the whole or any part of the term aforesaid without the written consent of the Lessor first had and obtained. All covenants and agreements herein contained or agreed to be kept or performed by either of the said parties hereto, shall extend to the heirs, executors, administrators, successors and assigns of such party.

In Witness Whereof, the said parties have hereunto set their hands and seals the day and year first above written.

SEALED AND DELIVERED } [L.S.]
IN THE PRESENCE OF US: } [L.S.]
[L.S.]

LANDLORD'S QUIT NOTICE

You are hereby notified to quit the premises situate

which I have leased to you, reserving rent—"or pay and satisfy the rent due and in arrear," being $ which amount was due on the day of , 19 and is hereby demanded,—(you having neglected or refused to pay the amounts so reserved, as often as the same has grown due, according to the terms of our contract—and there being no goods on the premises adequate to pay the rent so reserved, except such articles as are exempt from levy and sale by the laws of this Commonwealth) within days from the date hereof, or I shall proceed against you as the law directs.

Yours, etc.,

To

BANKRUPTCY

Acts of Bankruptcy—The Petition—Who May Become Bankrupts—Bankruptcy of Partnerships—Exemptions—Duties of Bankrupts—Compositions with Creditors—Discharge—Offenses—Preferences—Provable Debts.

NO more important subject presents itself for the consideration of the practical business man than that of bankruptcy. As everyone is likely to become involved, directly or indirectly, with bankrupt estates, it is essential to acquire a clear understanding of the principles which regulate such proceedings.

The Constitution of the United States vests in congress the power to regulate bankruptcy proceedings, which power has been exercised by the enactment of several statutes, the law now in force being the act of 1898, and supplements, which as a national bankruptcy law has been found to be more effective than its predecessors.

It will be necessary to discuss this subject in the form of a general synopsis of the acts of congress, with such explanations as may conduce to a clear understanding thereof.

In the first place, bankruptcy proceedings are under the control and supervision of the federal courts which are given original jurisdiction to adjudge persons bankrupt, to allow and disallow claims, reconsider allowed or disallowed claims, and allow or disallow them against bankrupt estates; to appoint receivers if necessary for the preservation of estates, to take charge of a bankrupt's property, to try and punish bankrupts violating the laws of the United States, cause the estates of bankrupts to be collected, reduced to money and distributed and determine controversies in relation thereto, to close estates whenever it appears that they have been fully administered, confirm or reject compositions between debtors and their creditors, determine all claims of bankrupts to their exemptions, discharge or refuse to discharge bankrupts and set aside discharges and reinstate the cases, to appoint and remove trustees and to tax costs whenever they are allowed by law. Besides the principal powers above enumerated, the jurisdiction of a court of bankruptcy is sufficient to properly regulate all matters appertaining to bankruptcy.

The object of our law is to enable an individual, firm or corporation becoming bankrupt to surrender all assets to the court,

which shall distribute the same to creditors and in due course of time discharge the bankrupt, which discharge shall operate as a release of all indebtedness. The procedure enables one who has become bankrupt to adjust his affairs in such a way that he may resume business with a clear record.

Acts of Bankruptcy.

The statute as amended by the Act of May 27, 1926, specifies six acts, the commission of any of which constitutes bankruptcy.

"Acts of bankruptcy by a person shall consist of his having (1) conveyed, transferred, concealed or removed, or permitted to be concealed or removed, any part of his property with intent to hinder, delay or defraud his creditors, or any of them; or (2) transferred, while insolvent, any portion of his property to one or more of his creditors with intent to prefer such creditors over his other creditors; or (3) suffered or permitted, while insolvent, any creditor to obtain a preference through legal proceedings, and not having at least five days before a sale or other disposition of any property affected by such preference vacated or discharged such preference; or (4) suffered or permitted while insolvent, any creditor to obtain through legal proceedings any levy, attachment, judgment or other lien, and not having vacated or discharged the same within thirty days from the date such levy, attachment, judgment, or other lien was obtained; or (5) made a general assignment for the benefit of his creditors, or while insolvent, a receiver or a trustee has been appointed or put in charge of his property; or (6) admitted in writing his inability to pay his debts and his willingness to be adjudged a bankrupt on that ground."

The intent with which a man transfers his property is the important element in the first-mentioned act of bankruptcy. That a transfer or concealment of property was made with intent to defraud creditors must be clearly established by him who asserts it. The fraudulent intent may be inferred from the necessary consequences of the act.

A transfer of property while insolvent for the purpose of giving one creditor a preference over another is an act of bankruptcy very frequently committed. The elements of preference are (1) insolvency, (2) intent to prefer, and (3) a transfer of property.

The first section of the act of 1898, defines insolvency as follows: "A person shall be deemed insolvent within the provisions of this act whenever the aggregate of his property, exclusive of any property which he may have conveyed, transferred, con-

cealed or removed, or permitted to be transferred, concealed or removed, with intent to defraud, hinder or delay his creditors, shall not, at a fair valuation, be sufficient in amount to pay his debts."

A debtor is presumed to know his financial condition and hence a transfer of property affords a very strong presumption of an intention to prefer if there are any creditors unprovided for.

The third act of bankruptcy occurs when an insolvent debtor allows a creditor to obtain a preference over other creditors through any legal proceeding without discharging the same at least five days before a sale or final disposition of any property affected by such preference. A debtor shall be deemed insolvent and his estate shall become subject to compulsory liquidation if he permits any execution issued against him under which any of his chattels, land or property are seized, levied upon or taken in execution, to remain unsatisfied.

The fourth Act of bankruptcy was added to the Acts already in force, by the Act of 1926. This Act was added to cover the case of a debtor who gives a judgment note with intent to allow an execution to be issued against his goods and thus prevent his creditors from sharing in the proceeds.

General Assignment or Receivership.

The making of a general assignment for the benefit of creditors, with or without preferences, has always been an act of bankruptcy. This fifth act of bankruptcy as amended now provides that a co-partnership, or a corporation, which is insolvent and applies for or, because of insolvency, has been put in charge of a receiver or trustee, under the laws of a state or of a territory or of the United States, thereby commits an act of bankruptcy. As it is one of the general purposes of the bankruptcy law to provide a uniform national law by which insolvent traders can make a *pro rata* distribution of their assets among all creditors, this amendment of 1903 was passed, and consequently a corporation or co-partnership which attempts to wind up its affairs by means of a receivership appointed by a state court may be adjudged an involuntary bankrupt under the federal statute.

The sixth and last act of bankruptcy which we shall consider is committed by an admission in writing of one's inability to pay his debts and his willingness to be adjudged a bankrupt on that account. It is not to be expected that in his correspondence a debtor who is a natural person will, with a purpose to get into bankruptcy, both confess inability to pay his debts and a willingness to be adjudged a bankrupt; the filing of a voluntary

petition is more direct. The value of this act did not appear until the fact that corporations might through it become, in effect, voluntary bankrupts was generally recognized. Three elements are necessary to this act of bankruptcy: (1) A writing signed by the debtor or some officer or agent duly authorized; (2) a distinct admission therein of his inability to pay his debts, and (3) an unqualified expression of willingness to be adjudged a bankrupt on that ground.

The Petition.

If a person has committed any one of the above-mentioned acts of bankruptcy, an interested party may petition the court to have such a person adjudged a bankrupt. Such petition may be filed within four months after the commission of the alleged act of bankruptcy, and such time shall not expire until four months after (1) the date of recording the transfer or assignment when the act consists in having made a transfer of any of his property with intent to hinder, delay or defraud his creditors or for the purpose of giving a preference as hereinbefore provided, or a general assignment for the benefit of his creditors, if by law such recording or registering is required or permitted, or, if it is not, from the date when the beneficiary takes notorious, exclusive or continuous possession of the property, unless the petitioning creditors have received actual notice of such transfer or assignment.

Solvency at the time of filing the petition constitutes a complete defense to any proceedings in bankruptcy. It is conceivable that a debtor may have been insolvent at the time the act of bankruptcy was committed, but not when the petition was filed. If solvency at such date is proved by the alleged bankrupt, the proceedings will be immediately dismissed. The burden of proving solvency is always on the alleged bankrupt. If this defense is relied on, the alleged bankrupt must appear in court at a preliminary hearing, with his books, papers and accounts, and submit to an examination, and testify as to all matters tending to establish solvency or insolvency. When the bankrupt puts his solvency in issue and appears and gives testimony, the burden of proving him a bankrupt shifts to the petitioning creditors.

If a petition is filed by one person for the purpose of having another adjudged a bankrupt, and an application is made to take charge and hold the property of the alleged bankrupt, or any part of the same, pending a hearing on the petition, the petitioner or applicant must file in court a bond, with two sufficient sureties residing within the jurisdiction of the court, in such sum as the

court shall order, the condition of said bond being the payment to the alleged bankrupt, in case the petition is dismissed, of all costs, expenses and damages occasioned by the seizure of the alleged bankrupt's property.

Who May Become Bankrupts.

The Federal Bankruptcy Act as amended specifies the class of persons who may acquire protection under the law, either as a voluntary or involuntary bankrupt, as follows:

"Any person except a municipal, railroad, insurance, or banking corporation, shall be entitled to the benefits of this act as a voluntary bankrupt.

"Any natural person, except a wage-earner or a person engaged chiefly in farming or the tillage of the soil, any unincorporated company and any moneyed business or commercial corporation except a municipal, railroad, insurance, or banking corporation, owing debts to the amount of $1,000 or over, may be adjudged an involuntary bankrupt upon default or an impartial trial, and shall be subject to the provisions and entitled to the benefits of this act. Private bankers, but not national banks or banks incorporated under state or territorial laws, may be adjudged involuntary bankrupts."

Corporations entitled to the benefit of the Bankruptcy Act as amended, shall mean all bodies having any of the powers and privileges of private corporations not possessed by individuals or partnerships and shall include limited or other partnership associations organized under laws making the capital subscribed alone responsible for the debts of the association, joint-stock companies, unincorporated companies and associations, and any business conducted by a trustee, or trustees, wherein beneficial interest or ownership is evidenced by certificate or other written instrument.

The amendment of 1903 further provides that the bankruptcy of a corporation shall not release its officers, directors or stockholders, as such, from any liability under the laws of a state, territory or of the United States.

A petition in bankruptcy by best authority can neither be filed by nor against a minor, but an alien may file a petition in bankruptcy as soon as he has acquired the necessary residence in the United States. A married woman may, in those states wherein they are given power to contract, secure the benefits of the Bankruptcy Act.

Any person owing debts may become a voluntary bankrupt, but to institute involuntary proceedings the debtor must, under the act, owe at least $1,000. There are two classes of persons who cannot be petitioned against—wage-earners and farmers. A

wage-earner has been held to be any person who works for wages, salary or hire at a compensation not exceeding $1,500 per annum. If a man is engaged in farming as the occupation which he considers of paramount importance to his welfare he cannot be adjudged an involuntary bankrupt.

If a corporation has been discharged in bankruptcy its creditors are not prevented from proceeding in a state court against the officers and stockholders to satisfy their liability.

Partners.

In view of the large number of partnerships existing it is important to determine how they are affected by bankruptcy proceedings.

The law provides that a partnership, during the continuation of the partnership business or after its dissolution, and before its affairs are finally settled, may be adjudged a bankrupt. It will be recalled that in our study of partnerships we stated that the law regarded a partnership as a collection of individuals, and could not be considered separate and distinct from the members composing it. But so far as bankruptcy is concerned, a partnership is treated as a legal entity, the identity of the various partners in bankruptcy being lost, and therefore the individual partners and the partnership are entities separate and distinct from each other. Thus, one or more partners may file their petition in bankruptcy without making the others parties, but notice of the pendency of the proceedings must be given to the other partners. Where two partners of a firm of three have filed a petition to have the firm put in bankruptcy, the federal court has jurisdiction over the partnership property, even though the third partner is proceeding in a state court for a settlement of the partnership affairs.

The creditors of the partnership shall appoint the trustees (the officer who takes title to all property belonging to the partnership). In other regards the estate is administered as provided for in any other estate.

The general rule that whatever a partner does within the scope of the partnership binds the other partners, applies to the commission of acts of bankruptcy. The application for or the appointment of a receiver of a partnership is an act of bankruptcy the same as in case of corporations.

The court of bankruptcy which has jurisdiction of one of the partners may have jurisdiction of all the partners and of the administration of the partnership and individual property. The trustee appointed is obliged to keep separate accounts of the

property belonging to the partnership and the property belonging to the individual partners thereof.

The expenses of administration are apportioned between the partnership estate and the estate of the individual partners, as the court shall determine.

If one member of a firm has a claim against it, the same may be proved in bankruptcy against the firm, and *vice versa*. A solvent partner cannot, however, prove a claim against the separate estate of his bankrupt partner until all the partnership creditors have been paid in full. The court is given power to marshal the assets of the partnership estate and the estates of the individual partners so as to prevent preferences and secure the equitable distribution of the property of the several estates.

Distribution.

The law provides that the net proceeds realized from a sale of partnership property shall be appropriated to the payment of partnership debts, and the net proceeds of the individual estate of each partner to the payment of his individual debts. Should any surplus remain of the property of any partner after paying his individual debts, such surplus shall be added to the partnership assets and be applied to the payment of the partnership debts. Should any surplus of the partnership property remain after paying the partnership debts, such surplus shall be added to the assets of the individual partners in the proportion of their respective interests in the partnership.

If one or more, but not all, of the partners become bankrupt, the partnership property shall not be administered in bankruptcy, unless by consent of the partner or partners who were not adjudged bankrupt. The partner or partners not adjudged bankrupt shall wind up the partnership business as expeditiously as possible and account for the interest of the partner or partners who have been adjudged bankrupt.

Exemptions of Bankrupts.

The sixth section of the bankruptcy act provides that it "shall not affect the allowance to bankrupts of the exemptions which are prescribed by the state laws in force at the time of the filing of the petition, in the state wherein they have had their domicile for the six months or the greater portion thereof immediately preceding the filing of the petition." A court of bankruptcy has jurisdiction to determine the merits of the bankrupt's claim to exemptions, but has no jurisdiction over the property. The individual members of a bankrupt partnership are

not entitled to exemptions out of the partnership property. Their interest, as individuals, in the joint property, is an interest in the surplus only. A bankrupt may expressly or impliedly waive his exemption. If a bankrupt fails to claim his property which is exempted by law at the proper time, the law implies that he has waived this right. He may expressly waive exemption in writing.

Duties of Bankrupts.

The law imposes certain duties upon a bankrupt which it is essential to observe. He must attend the first meeting of his creditors if ordered to do so by the court.

If he resides more than one hundred and fifty miles from the place of meeting, special cause must be shown to require his attendance, and if ordered to attend he is entitled to his actual expenses. He must also attend the hearing upon his application for a discharge, and comply with all lawful orders of the court. He is required to examine the correctness of all proofs of claim filed against his estate. As a rule the bankrupt sits by at the call of claims on the first meeting of creditors and informs the referee whether they are correct. He must execute and deliver such papers as shall be ordered by the court, such, for example, as the assignment of a license and the transfer of an insurance policy. He must also execute to the trustee in bankruptcy transfers of all his property in foreign countries. It is the duty of a bankrupt to immediately inform his trustee of any attempt by his creditors or other persons to evade the provisions of the bankruptcy act, and in case anyone has to his knowledge proved a false claim he must disclose this fact at once to the trustee. One of the most important duties required of a bankrupt is to prepare, make oath to, and file in court, within ten days after he has been adjudged a bankrupt if the proceedings are involuntary, and if voluntary, within ten days after the filing of the petition, a schedule of his property, showing the amount and kind of property, the location thereof, its money value in detail, and a list of his creditors, showing their residence, if known, and if unknown that fact is to be stated, the amounts due each of them, the consideration thereof, the security held by them, if any, and a claim for such exemption as he may be entitled to. This schedule must be made in triplicate. A bankrupt is also required to submit to an examination concerning the conducting of his business, the cause of his bankruptcy, his dealings with his creditors and other persons, the amount, kind, whereabouts of his property, and in addition all matters which may affect the administration and settlement of his estate. In order to aid a full disclosure of all necessary facts,

the law provides that no testimony given by a bankrupt shall be offered in evidence against him in any criminal proceedings.

The schedule of a bankrupt's property, debts, creditors, etc., may always be amended if incomplete or defective. The examination of a bankrupt is usually reduced to writing and signed by him.

Death or Insanity of Bankrupts.

The proceedings in bankruptcy do not end upon the death or insanity of a bankrupt, but the same shall be conducted and concluded in the same manner as though he had not died or become insane. If a bankrupt become insane, a committee will be appointed to represent his interests. The death of a bankrupt will not prevent his discharge therefrom, even though the requirement calling for the personal presence of the bankrupt cannot be complied with. In event of the death of a bankrupt, the law provides that his widow and children shall be entitled to all rights and dower and allowance as exist by the laws of the state of the bankrupt's residence.

Protection and Detention of Bankrupts.

A bankrupt is exempted from arrest upon any civil process, with the two following exceptions: (*a*) when such arrest is by order of a court of bankruptcy for contempt or disobedience of its lawful orders, or (*b*) when the warrant is issued from a state court having jurisdiction and served within such state, upon a debt or claim from which his discharge in bankruptcy would not be a release, and in such case he shall be exempt from such arrest when in attendance upon a court of bankruptcy or engaged in the performance of a duty imposed by this act.

Upon satisfactory proof by the affidavits of at least two persons that a bankrupt is about to leave the district in which he resides, and that his departure would defeat the proceedings in bankruptcy, the court may issue a warrant under which the bankrupt may be taken in custody and detained not longer than ten days. An application to detain a bankrupt can be made only between the time of filing the petition and the expiration of one month after the qualification of the trustee.

If a warrant for the apprehension of a bankrupt has been issued and he shall be found within the jurisdiction of a court other than the one issuing the warrant, he may be extradited in the same manner as persons under indictment are extradited from one jurisdiction to another.

Suits by and Against Bankrupts.

Any suit at law which is founded on a claim from which a discharge in bankruptcy would be a release, and which is pending against a person at the time of the filing of a petition against him, shall be stayed until after an adjudication or the dismissal of the petition; such action may be further stayed until twelve months after the date of such adjudication, or if within that time such person applies for a discharge, then until the question of such discharge is determined. The power to stay suits concerning the person or property of the bankrupt is essential to the orderly administration of a bankruptcy law, the purpose of such stays being to prevent the harassment of the bankrupt by suits, pending a discharge which will be a bar. Only such suits as are founded upon claims from which a discharge would be a release can be stayed.

The trustee in bankruptcy may, upon order of the court, defend or prosecute suits brought by or against the bankrupt estate, but no suit can be brought against the trustee of a bankrupt estate subsequent to two years after the estate has been closed.

Compositions with Creditors.

After a bankrupt has been examined in open court or at a meeting of his creditors and filed in court a schedule of his property and a list of his creditors, he may offer terms of composition to them. The theory of a composition is that the cash value of the bankrupt's estate is to be substantially divided among the creditors in proportion to their respective debts. Whether it is expedient to accept the percentage offered by a bankrupt is a question for the creditors to determine.

Before an application to confirm a composition with creditors can be filed it must be accepted in writing by a majority in number of all creditors whose claims have been allowed, which number must also represent a majority in amount of such claims. It is further necessary before filing such an application to deposit in court the consideration to be paid to creditors and the money necessary to pay debts entitled to priority and the expenses of the proceedings. A date and place is fixed for a hearing upon such an application, when and where objections, if any, may be made to the confirmation of the composition. A court will confirm a composition if satisfied that it is for the best interests of the creditors; that the bankrupt has not been guilty of any of the acts or failed to perform any of the duties which would be a bar to his discharge; and that the offer and its acceptance are made in good faith. If the composition is confirmed the con-

sideration shall be distributed as the court shall direct and the case be dismissed. If it is not confirmed, the estate must be administered in bankruptcy in the usual manner.

Thus a bankrupt's estate can be wound up in two ways, either by distribution in bankruptcy, or by distribution under a composition with creditors. Where a composition proposed by a bankrupt has been accepted by his creditors and approved by the court, the bankrupt is thereby discharged only from the claims of the creditors whose names, addresses and debts are placed on the statement produced at the meeting of creditors. A creditor whose name did not appear in the statement of the debtor or otherwise in composition proceedings, and whose debt is not mentioned, is not bound thereby. A composition with creditors, when duly confirmed by the court, operates as a discharge of the bankrupt. The acceptance of a composition from the principal debtor does not discharge any party collaterally liable for the same debt.

A bankrupt from whom a composition is received is necessarily at liberty to deal with his assets as he chooses, the result of a composition being that the legal title to the effects of the bankrupt remains in him.

To further protect creditors against fraud by the bankrupt, the law provides that after a composition has been confirmed, it may be set aside and the case reinstated in bankruptcy, upon the application of parties in interest filed within six months after the composition has been confirmed. To obtain this privilege it must be made to appear that fraud was practiced in the the procuring of such composition, and that the knowledge thereof has come to the petitioners since the confirmation of such composition.

If a composition is set aside, title to the bankrupt's property reverts in the trustee and all property acquired by the bankrupt is applied in payment of debts contracted while the composition was in force. Everyone is restored to the rights and remedies which existed at the time the composition was confirmed.

When a Discharge in Bankruptcy will be Granted.

Having pointed out what constitutes bankruptcy, by and against whom petitions in bankruptcy may be filed, together with the rights and duties of a bankrupt, we shall next inqure how a bankrupt may obtain his discharge.

At any time after one month, and not later than twelve months subsequent to being adjudged a bankrupt, the bankrupt may file an application for a discharge in the court of bankruptcy in which the proceedings are pending. If the bankrupt is unavoid-

ably prevented from filing it within the time limited, such an application for discharge may be filed within, but not after the expiration of, the next six months.

The court shall hear the application for a discharge, and such proofs and pleas as may be made in opposition thereto by parties in interest. After investigating the merits of the application, the bankrupt will be discharged unless he has committed an offense punishable by imprisonment, or destroyed, concealed or failed to keep books of account or records from which his condition might be ascertained (with intent to conceal his true financial condition), or obtained property on credit from any person upon a materially false statement in writing made to such person for the purpose of obtaining such property on credit; or at any time subsequent to the first day of the twelve months immediately preceding the filing of the petition, has transferred, removed, destroyed or concealed any of his property with intent to defraud his creditors; or during the proceedings in bankruptcy has refused to obey any lawful order of or to answer any material question approved by the court; or has failed to explain satisfactorily any losses of assets or deficiency of assets to meet his liabilities.

To sustain an objection to a discharge on the ground of concealing property it must be shown that the concealment was by the bankrupt, while a bankrupt, from his trustee, of property belonging to the estate in bankruptcy, and that such concealment was done knowingly and fraudulently.

The objection to a discharge on the ground that the bankrupt obtained property on credit on a false written statement of his financial condition, is an amendment made in 1903 to the original act of 1898. A man should not be entitled to be released from his indebtedness contracted upon his own false statements. The object of the bankruptcy law is to assist and protect honest traders, and the provisions of the act cannot be availed of to aid in the perpetration of fraud.

A man cannot become a voluntary bankrupt more than once in six years.

An application to revoke a discharge may be filed at any time within one year after a discharge has been granted. Such an application must be filed by a party in interest, and will be allowed upon proof of any fraud of which the bankrupt is guilty, and that the actual facts did not warrant the discharge.

Debts Affected by a Discharge.

A discharge in bankruptcy will release a bankrupt from all of his provable debts, with the following exceptions:

(1) Debts due for taxes levied by the United States, state, county, district or municipality in which the bankrupt resides.

(2) Debts which are liabilities for obtaining property by false pretenses, or for wilful and malicious injuries to the person or property of another, or for alimony due or to become due, or for maintenance and support of wife or child, or for seduction of an unmarried female, or for breach of promise of marriage accompanied by seduction.

(3) Debts which have not been duly scheduled in time for proof and allowance.

(4) Debts created by the bankrupt's fraud, embezzlement, misappropriation or defalcation while acting as an officer or in any fiduciary (trust) capacity.

(5) Debts due for wages due to workmen, clerks, traveling or city salesmen, or servants, which have been earned within three months before the date of commencement of the proceedings in bankruptcy.

(6) Debts due for moneys of an employee received or retained by his employer to secure the faithful performance by such employee of the terms of a contract of employment.

Debts contracted subsequently to the filing of the petition in bankruptcy are not affected by a discharge.

The effect of a discharge in bankruptcy being merely to suspend the right of action against the debtor upon all provable debts not falling within the excepted classes, the debt nevertheless remains and the moral obligation to pay it forms a sufficient consideration for a new promise to make such payment. A discharge in bankruptcy relates back to the adjudication of the fact of bankruptcy, and a subsequent promise to pay a debt is not required to be made after the discharge, but is sufficient if made between the adjudication and the discharge. The original debt, however, is revived only as of the date of the new promise, and where judgment is obtained upon the latter, the debtor is entitled to claim the exemption provided by the law in force at the latter date.

Process, Pleadings and Adjudications.

If a petition for involuntary bankruptcy is filed it must be served, with a writ of subpœna, upon the bankrupt, either personally or by publication. The bankrupt or any creditor shall appear and plead to the petition within five days after the return day. The court shall then make the adjudication or dismiss the petition, as the facts shall warrant.

Upon filing a voluntary petition, the court shall hear the same and either make the adjudication or dismiss the petition.

An alleged bankrupt against whom an involuntary petition has been filed is entitled to have a trial by jury upon the question of his insolvency and any act of bankruptcy he is alleged to have committed.

A court of bankruptcy has the power, upon application of any officer, bankrupt or creditor to require any designated person, including the bankrupt and his wife, to appear in court or before a referee and be examined concerning the acts, conduct or property of the bankrupt whose estate is in process of administration. A bankrupt's wife can only be examined upon facts concerning business transacted by her or to which she is a party, and to determine the fact whether she has transacted or been a party to any business of the bankrupt.

Referees.

The twenty-second section of the act of 1898, provides that after a person has been adjudged a bankrupt, the court may cause the trustee to proceed with the administration of the estate, or refer the case to a referee with either general or limited power to act upon the case and make a report. For the convenience of the parties, the court may transfer a case from one referee to another. Under this section of the act, a bankrupt's estate may be administered under the direct supervision of the judge and without an order of reference. In such a case a meeting of creditors would be called first, and after the election of the trustee, the case would proceed in the usual manner. Ordinarily, however, all cases are referred to a referee who is given general powers.

A court of bankruptcy shall within its territorial limits appoint referees, each for a term of two years. The qualifications of a referee are that he shall not hold any office of profit or emolument under the laws of the United States or of any state, other than commissioner of deeds, justice of the peace, master in chancery or notary public; he must not be related by consanguinity or affinity within the third degree as determined by the common law, to any of the Judges of the courts of bankruptcy or circuit courts of the United States, or of the justices or judges of the appellate courts of the districts wherein they may be appointed; they must be residents of and have their offices in the territorial districts for which they are to be appointed.

Referees within their districts are vested with authority to consider all petitions in bankruptcy referred to them and make the adjudications or dismiss the petitions, to administer oaths to and examine persons as witnesses, and require the production of documents to be used as evidence in proceedings before

them; to perform such duties, except as to questions arising on applications of bankrupts for compositions with creditors and discharges, imposed on courts of bankruptcy, and to authorize the employment of stenographers.

It shall be the duty of referees to declare dividends and to deliver to the trustees dividend sheets showing the dividends declared and to whom payable; to examine all schedules of property and lists of creditors filed by bankrupts and cause such as are incomplete or defective to be amended; to furnish such information concerning the estates in process of administration before them as may be requested by the parties in interest; prepare and file the schedules of property and lists of creditors required to be filed by the bankrupts, or cause the same to be done, when the bankrupts fail to do so; make up records of the evidence given in contested matters arising before them, together with their findings, and submit same to the courts; and whenever their respective offices are in the same town or city, call upon the clerk of the court of bankruptcy and obtain all papers filed in cases which have been referred to them.

Referees cannot act in cases in which they are directly or indirectly interested, practice as attorneys in any bankruptcy proceedings, or purchase, directly or indirectly, any property of an estate in bankruptcy.

If in any proceeding before a referee a person shall disobey or resist any order, misbehave, neglect to produce any document when ordered to do so, or refuse to appear and take the oath of a witness and be examined, the referee shall report the fact to the court and the guilty party may be punished for contempt of court.

Trustees.

It is the function of the creditors of a bankrupt estate at their first meeting after the adjudication to appoint one or three trustees of such estates. Two trustees cannot be appointed. It must be either one or three. If the creditors fail to appoint a trustee or trustees the court shall do so.

Any individual competent to perform the duties of trustee, residing in the same judicial district, may be appointed. Any corporation authorized by its charter to act as such may also be selected, provided it has an office in the judicial district in which it is appointed.

The duties of trustees are to account for and pay over to

the estates under their control all interest received by them upon property of the bankrupt estate, to collect and reduce to money the property of the estates and close up the estate as quickly as possible; to deposit all money received by them in one of the designated depositories and to disburse same by check or draft; to furnish such information concerning the estates of which they are trustees as may be requested by parties in interest; to keep regular accounts showing all amounts received and from what sources, and the amounts expended by them and on what accounts; to submit before the final meeting of creditors detailed statements of the administration of the estates; to make final reports and file final accounts with the court fifteen days before the day fixed for the final meeting of the creditors; to pay dividends within ten days after they are declared by the referees; to report to the court the condition of the estates and the amount of money on hand within the first month after their appointment and every two months thereafter; and to set apart the bankrupt's exemptions as soon as practicable after their appointment.

If three trustees are appointed, the concurrence of two is required to render valid any act concerning the administration of the estate. The compensation of trustees is fixed by the courts upon a graduated scale, according to the value of the estate. The accounts and papers of trustees are open to inspection by the officers of the court and all parties in interest. Both referees and trustees are required to furnish bonds, with two sufficient sureties, for the faithful performance of their official duties.

If a party is dissatisfied with the judgment rendered by a court of bankruptcy, an appeal may be taken to the United States Circuit Court of Appeals in the following cases: (1) From a judgment adjudging or refusing to adjudge the defendant a bankrupt; (2) from a judgment allowing or rejecting a debt or claim of $500 or over; (3) from a judgment granting or denying a discharge. Appeals must be taken within thirty days. A further appeal may be had to the Supreme Court of the United States only in cases where the amount in controversy exceeds the sum of $2,000 and the question involved is a constitutional one, or where some justice of the Supreme Court of the United States shall certify that in his opinion the determination of the question or questions involved in the allowance or rejection of such claim is essential to a uniform construction of the bankruptcy law throughout the United States.

Arbitration of Controversies.

The trustee of an estate may submit a dispute to arbitration. Three arbitrators shall be chosen by mutual consent, or one by the trustee, one by the other party to the controversy and the third by the two thus chosen.

The findings of the arbitrators or a majority of them, upon the questions in dispute, must be filed in court and are given like force and effect as the verdict of a jury.

Offenses.

As ignorance of the law is no defense, it is of advantage for everyone to understand what constitute offenses under the bankruptcy act, and the punishment therefor.

Upon conviction of the offense of having knowingly and fraudulently appropriated to his own use, embezzled, spent or unlawfully transferred any property or secreted or destroyed any document belonging to a bankrupt estate which came into his charge as trustee, receiver, custodian or other officer of the court, a person shall be punished by imprisonment for a period not to exceed five years.

Upon conviction of any one of the eight following offenses a person shall be punished by imprisonment for a period not to exceed five years, to wit: Concealing from the receiver, trustee or other officer any of the property belonging to the estate of a bankrupt; making a false oath or account in any proceeding in bankruptcy; presenting under oath any false claim for proof against the estate of a bankrupt, or using any such claim in composition personally or by agent, proxy or attorney; receiving any material amount of property from a bankrupt after the filing of the petition, with intent to defeat this act; receiving or attempting to receive any money or property from any person as a consideration for acting or forbearing to act in bankruptcy proceedings; concealing or transferring property of the debtor after serving as agent of any person or corporation, in contemplation of the bankruptcy of such person or corporation, and with intent to defeat the Bankruptcy Act; concealing, destroying or falsifying any book or document relating to the affairs of a bankrupt, after the filing of the petition or in contemplation of bankruptcy; withholding from the receiver or trustee any book, document or paper affecting or relating to the affairs of a bankrupt, after the filing of a petition.

A referee shall forfeit his office and be a subject to a fine not exceeding five hundred dollars if he acts in a case in which he is directly or indirectly interested, or purchased directly or indirectly any property of the estate in bankruptcy of which

he is referee, or refused to permit a reasonable opportunity for the inspection of the accounts relating to the affairs of, and the papers and records of estates in his charge by parties in interest when directed by the court so to do.

No person shall be prosecuted for any offense under the Bankruptcy Act unless the indictment is filed in court within three years after the commission of the offense.

Meetings of Creditors.

As soon as a case has been referred to a referee it is his first duty to call for a meeting of all the creditors. The law provides that the first meeting of the creditors of a bankrupt shall be held not less than ten nor more than thirty days after the adjudication. The referee or, if there has been no referee, the judge, must preside at all first meetings, who, before proceeding with the other business, may allow or disallow the claims of creditors there presented, and may publicly examine the bankrupt or cause him to be examined at the suggestion of any creditor. The following order of business is usually followed: (*a*) Call for and noting of those present in person or by attorney (one qualified to practice before the circuit or district court); (*b*) application for amendments; (*c*) allowance or disallowance of claims; (*d*) election of the trustee and fixing of the amount of his bond; (*e*) examination of the bankrupt; (*f*) miscellaneous motions, orders and instructions; (*g*) continuance of the meeting to a place, day and hour certain.

Subsequent meetings of creditors may be held at any time and place when all the creditors who have secured the allowance of their claims sign a written consent to hold the same. The court may also call a meeting of creditors whenever one-fourth or more in number of those who have proven their claims shall file a written request therefor. Such request must be signed by a majority of such creditors in number and amount, and indicate a designated place, whereupon the court shall call for such meeting within thirty days after the date of filing the request. As soon as the affairs of a bankrupt estate are ready to be closed a final meeting of creditors shall be ordered. The referee usually calls for creditors' meetings subsequent to the first upon a petition or motion made by the trustee. Every creditor has the absolute right to ten days' notice of all important steps taken in a case.

All matters raised at a creditors' meeting shall be decided by a majority vote in number and amount of claims of all creditors whose claims have been allowed and who are present. Those

creditors who have secured claims or claims having priority shall not be entitled to a vote at a creditors' meeting. Such claims shall not be counted in computing either the number of creditors or the amount of their claims. If the amounts of such claims exceed the values of the securities or priorities, the excess may be counted.

A claim against a bankrupt estate must be proven in the manner prescribed by the bankruptcy law, and formal proof of a claim consists of a written statement under oath, signed by the creditor, and setting forth the claim, the consideration therefor, what securities are held therefor, and whether any payments have been made thereon. Proofs of debt must be filed with the referee, and must be proved within six months after the adjudication, or within sixty days after settled by liquidation. The rights of infants and insane persons without guardians, without notice of the proceedings, may continue six months longer.

If a claim is founded on a written instrument, the same shall be filed with the proof of claim.

Secured claims and those which have priority may be allowed to enable the creditors to participate in the first creditors' meeting prior to the determination of the value of their securities or priorities, but shall only be allowed for such sums as appear to be owing over and above the value of the securities and priorities. A secured creditor may surrender his security or not, as he chooses. If the security be surrendered, it inures to the benefit of all the creditors, and the claim, if otherwise objectionable, is allowed at the full amount. If a claimant is fully secured he should not be allowed to file a proof, and does not become a party to the proceeding. The claim of any creditor who has received any preference which is void or voidable under the provisions of the bankruptcy act, shall not be allowed, unless such creditor surrenders the preference. In other words, if a creditor, in a transaction occurring not more than four months before the bankruptcy, obtains an advantage over the other creditors through a conveyance, transfer or assignment, such creditor must surrender his advantage before his claim can be filed and allowed.

The value of a security shall be determined by converting the same into money according to the terms of the agreement pursuant to which such security was delivered to the creditor. Its value may also be determined by agreement, arbitration, compromise or litigation, as the court shall direct. The value of the security when determined shall be credited upon the claim, and a dividend shall be paid only on the unpaid balance.

A reconsideration of an allowed claim may be obtained before the estate has been closed, and such claim will be either

reallowed or rejected in whole or in part, according to the equities of the case. If a claim upon which a dividend has been paid is reconsidered and rejected, the trustee may recover the amount of the dividend paid.

Notice to creditors must be given of every important step in a bankruptcy proceeding. Ten days' notice must be given of all examinations of the bankrupt, all hearings upon applications for the confirmation of compositions, all meetings of creditors, all proposed sales of property, the declaration and time of payments of dividends, the filing of the final accounts of the trustee and the time when and the place where they will be examined and passed upon, the proposed compromise of any controversy, and the proposed dismissal of the proceedings. Thirty days' notice shall be given of all applications for the discharge of bankrupts.

Who May File and Dismiss Petitions.

The fifty-ninth section of the federal bankruptcy law regulated who may file and dismiss petitions. With reference to involuntary petitions, the law provides that three or more creditors who have provable claims against any person which amount in the aggregate to five hundred dollars or more in excess of the value of securities held by them, may file an involuntary petition to have such person adjudged a bankrupt. Furthermore, if all of the creditors of any person are less than twelve in number, then any one of such creditors whose claim amounts to five hundred dollars may file a petition to have him adjudged a bankrupt.

Involuntary petitions must be filed in duplicate, and if it is averred that the creditors of the bankrupt are less than twelve in number and less than three creditors have joined in the petition, an answer may be filed by the alleged bankrupt, setting out, under oath, the names and addresses of a larger number of creditors.

In computing the number of creditors of a bankrupt for the purpose of determining how many creditors must join in the petition, any creditor employed by the bankrupt at the time of filing the petition, or related to him within the third degree, who has not joined in the petition, shall not be counted. A petitioning creditor cannot withdraw and thus reduce the number to less than three. A proceeding once begun must result in an adjudication or a dismissal.

Preferred Creditors.

A preference in relation to bankruptcy has been defined as a "conventional fraud," the debtor merely preferring to pay one creditor more than, or to the exclusion of, others. If a bankrupt

gives a preference and the person receiving it or to be benefited thereby, shall have had reasonable cause to believe that a preference was intended, it shall be voidable by the trustee, who may recover the property or its value from such person. For the purpose of such recovery, any court of bankruptcy, and any state court which would have had jurisdiction if bankruptcy had not intervened, shall have concurrent jurisdiction.

The act provides that a preference is created if any person, being insolvent, has within four months before the filing of a petition in bankruptcy, or after the filing of the petition and before the adjudication, procured or suffered a judgment to be entered against him in favor of any person, or who has made a transfer of any of his property, the effect of the enforcement of such judgment or transfer being to enable any one of his creditors to obtain a greater percentage of his debt than any other of such creditors of the same class. It is further provided by amendment of 1903, that where the preference consists in a transfer, such period of four months shall not expire until four months after the date of recording or registering of the transfer, if by law such recording or registering is required or permitted.

The word transfer includes every mode of disposing of or parting with property, including the payment of money. Where the transfer does not diminish the general fund on hand for the benefit of all creditors, as where it consists of the giving of a fair security for a present loan, or the substitution of securities pledged to an old loan, no preference results. On the other hand, any transfer within the four months' period named in the act by way of payment on or security of an antecedent debt, is a preference. A transfer of firm property in payment of an individual partner's debt is a preference, but the firm must be adjudged a bankrupt before a suit can be brought to avoid it.

Only a creditor can receive a preference. A transfer may be made to a third person and still be a preference if the creditor is benefited thereby. Where all the elements of a voidable preference exists, the trustee may recover the property, but if he refuses to sue, it has been held that a creditor may be permitted to do so for the benefit of all the other creditors.

If a creditor has been given a preference and subsequently gives the debtor credit without security of any kind for property which becomes a part of the debtor's estate, the amount of such new credit remaining unpaid at the time of the adjudication in bankruptcy may be set off against the amount which would otherwise be recoverable for him.

Frequently in contemplation of the filing of a petition in

bankruptcy by or against him, a bankrupt will pay money or transfer property to his counsel. The law provides that if this be done, the transaction may be re-examined by the court on petition of the trustee or any creditor, and shall only be held valid to the extent of a reasonable amount to be determined by the court, and the excess may be recovered by the trustee for the benefit of the estate.

Debts Which May Be Proved.

Debts of the bankrupt may be proved and allowed against his estate which are (1) a fixed liability, as evidenced by a judgment or an instrument in writing, absolutely owing at the time of the filing of the petition against him, whether then payable or not, with any interest thereon which would have been recoverable at that date or with a rebate of interest upon such as were not then payable and did not bear interest; (2) due as costs taxable against an involuntary bankrupt who was at the time of the filing of the petition against him plaintiff in a cause of action which would pass to the trustee and which the trustee declines to prosecute after notice; (3) founded upon a claim for taxable costs incurred in good faith by a creditor before the filing of the petition in an action to recover a provable debt; (4) founded upon an open account, or upon a contract expressed or implied; and (5) founded upon provable debts reduced to judgments after the filing of the petition and before the consideration of the bankrupt's application for a discharge, less costs incurred and interests accrued after the filing of the petition and up to the time of the entry of such judgments.

Unliquidated claims against the bankrupt may, pursuant to application to the court, be liquidated in such manner as it shall direct, and may thereafter be proved and allowed against his estate.

The distinction must be noted between a debt which may be proved and a debt which may be allowed. Speaking generally, any claim on which an action in law or in equity might have been maintained may be proved, but whether or not a debt so proved will be allowed is quite another question. A provable debt is merely one which comes within a certain class of debts which may be presented and receive consideration. Its allowance depends upon the merits of the claim and the evidence in support of it.

Any liability which arises out of a contract is provable. Debts created by the fraud or embezzlement of the bankrupt are provable, but are not annulled by the bankrupt's discharge. An assignee of a creditor has a provable claim if his assignor had,

even if the assignment is subsequent in date to the bankruptcy. A married woman may, in those states where their common-law disabilities have been removed by statute, prove a debt against her husband's estate, although her claim is usually viewed with suspicion. To be provable a debt must be a fixed liability absolutely owing at the time the petition in bankruptcy is filed, regardless of the time of payment. For example, money owing under a contract for yearly employment may constitute a provable debt. Such debts as may be proved which are founded on a contract, express or implied, must be based upon a legal consideration, must not be against public policy, and, if a corporation, must not be *ultra vires*, *i. e.*, the contract must be such as it has charter power to enter into.

If a liability arises not out of a contract, but in tort, *i. e.*, the wrongdoing of another, such as negligence, personal assault and slander, etc., such liability must be liquidated or reduced to a definite amount before it can be proved as a claim against a bankrupt's estate.

Although it is still a controverted question, the weight of authority holds that a judgment for a fine cannot constitute a provable debt in bankruptcy. The criminal does not owe a fine, which is not a debt, but a punishment. Alimony in divorce cases is not a provable debt. It is subject to change by the order of the court, and hence is not a fixed liability. A debt outlawed by the Statute of Limitation cannot be proved, since the debt could not be asserted before bankruptcy, and hence the law prevents its proof against the other creditors, which if allowed would reduce their *pro rata* share.

Debts Which Have Priority.

A certain class of debts is given priority in bankruptcy. The law makes it the duty of the trustees to pay all taxes legally due and owing by the bankrupt to the United States, state, county, district or municipality in advance of the payment of dividends to creditors, and upon filing receipts from the proper public officers for such payment, he shall be credited with the amount thereof. No order shall be made for the payment of a tax assessed against real estate of a bankrupt in excess of the value of the interest of said bankrupt estate therein, as may be determined by the Court.*

* This requirement was made by recent amendment for the reason that estates may be and are depleted, and, at times, consumed by the payment of taxes upon property in which the bankrupt has only a limited interest, with the result that the only beneficiaries in such a situation are mortgagees or other lienors, to the exclusion of creditors, who should not be required to contribute to the payment of taxes upon property, or interest in property, which is not applicable to the liquidation of their claims.

Debts having priority shall be paid in full out of the bankrupt's estate in the following order: (1) the necessary costs of preserving the estate subsequent to filing the petition in bankruptcy; (2) the filing fees paid by creditors in involuntary cases, and where property of the bankrupt, transferred or concealed by him either before or after the filing of the petition, shall have been recovered for the benefit of the estate of the bankrupt by the efforts and at the expense of one or more creditors, the reasonable expenses of such recovery; (3) the cost of administration, including the fees and mileage payable to witnesses, and one reasonable attorney's fee for services rendered to the petitioning creditors in involuntary cases, and to the bankrupt in voluntary cases; (4) where the confirmation of composition terms has been refused or set aside upon the objection and through the efforts and at the expense of one or more creditors, the reasonable expenses of such creditors in opposing such confirmation; (5) wages due to workmen, clerks, traveling or city salesmen or servants which have been earned within three months before the date of the commencement of proceedings, not to exceed six hundred dollars to each claimant; and (6) taxes legally due and owing to the United States, state, county, district or municipality; (7) debts owing to any person who by the law of the states or of the United States is entitled to priority. If there is not sufficient funds to pay all priority debts, the last class in order abates first.

Declaration and Payment of Dividends

Every creditor of a bankrupt estate is primarily interested in the manner in which dividends are payable. The law in substance provides that dividends of an equal per centum shall be declared and paid on all allowed claims, except such as have priority or are secured. The first dividend shall be declared within thirty days after the adjudication, if the money of the estate in excess of the amount necessary to pay the debts which have priority and such claims as have not been, but probably will be, allowed, equal to five per centum or more of such allowed claims. Dividends subsequent to the first shall be declared upon like terms as the first and as often as the amount shall equal ten per centum or more and upon closing the estate. Dividends may be declared oftener and in smaller proportions if the judge shall so order: Provided, That the first dividend shall not include more than fifty per centum of the money of the estate in excess of the amount necessary to pay the debts which have priority and such claims as probably will be allowed. The final dividend, however, shall not be declared within three months after the first dividend shall be declared.

VOLUNTARY PETITION IN BANKRUPTCY

To the Honorable
Judge of the District Court of the United States
for the District of

The petition of of , in the county of , and District, and State of , respectfully represents:
That he has

for the greater portion of six months next immediately preceding the filing of this petition

within said judicial district; that he owed debts which he is unable to pay in full; that he is willing to surrender all his property for the benefit of his creditors, except such as is exempt by law, and desires to obtain the benefit of the Acts of Congress relating to Bankruptcy.

That the schedule hereto annexed, marked A, and verified by your petitioner's oath, contains a full and true statement of all his debts; and (so far as it is possible to ascertain) the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said acts;

That the schedule hereto annexed, marked B, and verified by your petitioner's oath, contains an accurate inventory of all his property, both real and personal, and such further statements concerning said property as are required by the provisions of said acts;

Wherefore your petitioner prays, that he may be adjudged by the court to be a bankrupt, within the purview of said acts.

Petitioner.

Attorney.

United States of America, District of ss:

I, , the petitioning debtor mentioned and described in the foregoing petition, do hereby make solemn oath that the statements contained therein are true, according to the best of my knowledge, information and belief.

Petitioner.

Subscribed, and sworn to before me, this day of A. D. 19 .

CREDITORS' PETITION IN BANKRUPTCY

IN THE DISTRICT COURT OF THE UNITED STATES

For the *District of*

THE PETITION *of*
respectfully shows:

That
of , *has for the greater portion of six months next preceding the date of filing this petition, had his principal place of business,* [or *resided,* or *had his domical*] *at* , *in the County of* , *and State and District aforesaid, and owes debts to the amount of $1,000.*

That your petitioners are creditors of said , *having provable claims amounting in the aggregate, in excess of securities held by them, to the sum of $500. That the nature and amount of your petitioners' claims are as follows:*

And your petitioners further represent that said *is insolvent, and that within four months next preceding the date of this petition the said* *committed an act of bankruptcy, in that he did heretofore, to wit, on the* *day of*

WHEREFORE *your petitioners pray that service of this petition with a subpœna, may be made upon* *as provided in the Acts of Congress relating to bankruptcy, and that he may be adjudged by the court to be a bankrupt within the purview of said acts.*

Attorney

Petitioners.

NOTE.—Where the claim of the petitioner rests upon an assigned claim there must be attached to one of the petitions the assignment with an affidavit setting forth the actual consideration for the assignment.

PROOF OF SECURED DEBT

IN THE DISTRICT COURT OF THE UNITED STATES

For the *District of*

IN THE MATTER OF } *No.* *In Bankruptcy.*
Bankrupt. }

At *, in said District of* *, on the* *day of* *, A. D. 191* *, came of* *, in the County of* *, in said District of* *, and made oath, and says that* *, the person by* [or *against*] *whom a petition for Adjudication of Bankruptcy has been filed, was at and before the filing of said petition, and still is, justly and truly indebted to said deponent in the sum of* *Dollars; that the consideration of said debt is as follows:*

that no part of said debt has been paid [*except*]

that there are no set-offs or counterclaims to the same [*except*]

and that the only securities held by this deponent for said debt are the following:

Creditor.

SUBSCRIBED *and sworn to before me this* *day of* *, A. D. 19*

(Official Character.)

PROOF OF UNSECURED DEBT

IN THE DISTRICT COURT OF THE UNITED STATES

For the *District of*

IN THE MATTER OF } *No.* *In Bankruptcy.*
Bankrupt. }

At *, in said District of* *, on the* *day of* *, A. D. 19* *, came of* *in the County of* *in said District of* *, and made oath, and says that* *, the person by* [or *against*] *whom a Petition for Adjudication of Bankruptcy has been filed, was at and before the filing of said petition, and still is, justly and truly indebted to said deponent in the sum of* *Dollars; that the consideration of said debt is as follows:*

that no part of said debt has been paid [*except*]

that there are no set-offs or counterclaims to the same [*except*]

and that deponent has not, nor has any person by his order, or to his knowledge or belief, for his use, had or received any manner of security for said debt whatever, and that no note has been received for said debt and no judgment rendered thereon.

Creditor.

SUBSCRIBED *and sworn to before me this* *day of* *A. D. 19*

(Official Character.)

PROOF OF DEBT DUE CORPORATION

IN THE DISTRICT COURT OF THE UNITED STATES

For the *District of*

IN THE MATTER OF } *No.* *In Bankruptcy.*
Bankrupt. }

At *, in said District of* *, on the* *day of* *, A. D. 19* *, came of* *in the County of* *and State of* *, and made oath, and says that he is Treasurer of*

a corporation incorporated by and under the laws of the State of *and carrying on business at in the County of* *, and State of* *, and that he is duly authorized to make this proof, and says that the said the person by* [or *against*] *whom a Petition for Adjudication of Bankruptcy has been filed, was at and before the filing of the said petition and still is, justly and truly indebted to said corporation in the sum of* *Dollars, that the consideration of said debt is as follows: that no part of said debt has been paid* [*except*] *that there are no set-offs or counterclaims to the same* [*except*] *and that said corporation has not, nor has any person by its order, or to the knowledge or belief of said deponent, for its use, had or received any manner of security for said debt whatever, and that no note has been received for said debt and no judgment rendered thereon.*

of said Corporation.

SUBSCRIBED *and sworn to before me this* *day of* *, A. D. 19*

(Official Character.)

NOTE.—When proof is not made by the treasurer insert the following clause: "That the reason this proof is not made by the treasurer is that . . . etc. [stating reason], and that deponent is an officer of such corporation whose duties most nearly correspond to those of treasurer."

DEMAND IN RECLAMATION

In the District Court of the United States for the District of

IN THE MATTER OF } *In Bankruptcy No.*

Alleged Bankrupt. }

SIR:

Please take notice that the undersigned is the owner of and entitled to the immediate possession of the following chattels which were wrongfully and unlawfully obtained from him by the above-named (alleged) bankrupt, and that the undersigned demands the immediate return of said property, to wit:

(*Here set forth property claimed in detail.*)

Dated,

Yours, etc.,

By

Attorney.

NOTE.—After filing the above claim with the Trustee, consult an Attorney who will arrange for filing a bond and the petition in Reclamation.

INSURANCE

History and Development—Insurable Interest—Life Insurance—The Application—The Policy—Accident Insurance—Fire Insurance—The Company's Liability—Marine Insurance—Barratry—General Average—Particular Average.

EXPOSURE to serious casualties or accident, such as premature death or disability, fires and shipwrecks, constantly exists, and as it is impossible to prevent the happening of such events, it is of the greatest consequence to guard against the loss which their occurrence causes. This may be provided for by means of a general fund which is obtained by the imposition of a small contribution or premium upon all who are exposed to the common hazard, from which the few who suffer may be indemnified.

This system is what is known as insurance, its principal branches being life, accident, fire and marine, and the development of these branches of insurance has, among civilized people of modern times, assumed a vast and increasing importance. The four principal classes of insurance we will consider separately in the order named. There are several other branches of insurance, such as indemnity insurance against defaults or breaches of trust on the part of officers, trustees or employees, plate-glass insurance, insurance against boiler explosions, credit insurance, automobile insurance, etc., which cannot be discussed in detail in a book of this kind, the general principles of which differ but slightly from those we will consider.

First Form of Insurance.

The first form of insurance developed was that of marine insurance, which has existed since the time of the early Roman emperors, the name of the insurance contract, called a "policy," being of Italian derivation. However, the rules or trade customs under which the business of insurance has grown up are based upon the "Usages of Lloyd's," which was originally a coffee house in London, where seafaring men and those engaged in maritime business congregated. In 1779 the Society of Lloyd's adopted a form of policy known as "Lloyd's Policy," which is the basis of the policies now in use in the United States.

Fire insurance as it is known today was practically unknown until after the great London fire of 1666.

The Equitable Assurance Society of London, organized in 1762, was the pioneer of the modern system of life insurance. The business of life insurance did not assume any great importance in the United States until after the Civil War, since when it has grown with unparalleled rapidity.

Various Kinds of Companies.

The business of insurance is transacted principally by corporations organized under general laws instead of special charters, which are divided into stock, mutual and mixed companies. A stock company has for its basis a capital stock, owned by stockholders who are quite distinct from the insured. The premium rates are lower than those of mixed or mutual companies, the profits over and above required accumulations and the liabilities of the company being divided in the shape of dividends among the stockholders.

Mutual companies have no stockholders, the insured themselves being members of the company, entitled to the management of its affairs, and to the receipt of any share of surplus premiums over and above the amount required for the payment of losses and expenses. In mixed companies, which partake of the nature of both stock and mutual companies, a certain proportion of the profits is paid to the stockholders and the remainder distributed among the insured.

In mutual companies premiums are frequently paid in whole or in part by notes of the insured, which the company holds, and from time to time assesses to pay losses and expenses.

Most states of the Union have established by law an insurance department for the better protection of the insured. Foreign insurance companies and domestic life insurance companies are required prior to commencing business to deposit money or equivalent securities, which are held as collateral by the department for the security of the insured. Stated reports must also be furnished the department indicating in detail the business affairs of the company making the report, and a certain reserve fund must be maintained to meet future liabilities.

In life insurance the premiums charged are based upon calculations made from mortality tables. These tables are tabulated exhibits of the number of survivors and the number of those dying each subsequent year among a given number of persons taken at various given ages. The mean or average duration of life of an individual after any specified age, according to a given table of mortality, is called the expectation of life.

The Contract of Insurance.

The contract of insurance is founded on the principle of indemnity, with certain modifications hereinafter noted. It is detrimental to the public, as offering an inducement to the commission of crime, to permit the insured to gamble upon the event of death or the destruction of property. Consequently, in all branches of insurance, a binding contract cannot be made unless the insured has a pecuniary interest in the subject of insurance, *i. e.*, the insured must be so situated with reference to the life or property that his gain of the policy money will be offset by his loss of the subject-matter.

The policy in life insurance may be effected upon one's own life, upon the life of a near family relative or upon the life of a more distant relative or stranger to the blood. In the first case the temptation to suicide is not deemed fatal; in the second case, normal family affection is sufficient; but in the third class a pecuniary interest is always required. A distinction should therefore be made between insurance on one's own life or on the life of a near relative where no interest is required, and insurance upon the lives of others or upon property, where a real interest is always necessary.

The courts have held that life insurance is not a contract of indemnity, but that property insurance is.

A policy of insurance is a property right and is consequently assignable. In view of the fact that death or the destruction of property must occur in order to realize its value, the right to assign a policy of insurance is restricted by the doctrine of insurable interest.

Insurable Interest.

As insurance is based upon the existence of an insurable interest on the part of the insured, it is necessary to define clearly what constitutes an insurable interest.

As applied to life insurance, one has an insurable interest in the life of another when there is a reasonable expectation of advantage or benefit from the continuance of the life of such other party. Every person has an insurable interest in his own life and health, or of anyone he depends upon, wholly or in part, for education and support; or of any person under legal obligation to him for the payment of money, or of any person upon whose life any estate or interest which is vested in him depends. Thus, for example, a creditor has an insurable interest in the life of his debtor, a partner in the life of a co-partner, a woman in the life of her fiancé, a wife in the life of her husband, and it is important

to note in this latter connection that the validity of the policy will survive a divorce. Where one takes out a policy of insurance on his own life and subsequently assigns it to one who has no insurable interest, but who continues to pay the premiums, the assignment is a wagering contract and hence void as being contrary to the policy of the law.

It being impossible to estimate exactly the interest which one has in his own life, it may be valued at any amount which the parties agree upon, which is the case of all insurance interests founded upon relationship. But if a creditor, however, takes out insurance upon the life of his debtor greatly in excess of the amount due, the transaction would be void as being, in reality, a wager.

The element of dependency must be coupled with relationship to furnish the basis for an insurable interest. To illustrate, an adult son has no insurable interest in the life of his father by virtue of the relationship, or a nephew in the life of an uncle, or (very fortunately) a son-in-law in the life of a mother-in-law.

In regard to fire insurance, the rule of insurable interest has been judicially stated as follows:

"Whenever there is a real interest to protect, and a person is so situated with respect to the subject of insurance that its destruction would or might reasonably be expected to impair the value of the interest, an insurable interest would exist, whether the interest was an ownership in, or a right to, the possession of the property, or simply an advantage of a pecuniary character having a legal basis, but dependent upon the continued existence of the subject. It is well settled that a mere hope or expectation, which may be frustrated by the happening of some event, is not an insurable interest."

The same person may have different insurable interests in the same property, and different persons may have separate insurable interests in the same property. Where the insured is jointly interested with others, as, for instance, co-partners or trustees, or where he is intrusted with goods of other people, as in the case of a common carrier or warehouseman, he may either insure his own interest or his own liability in regard to the property, or he may insure the property to its full value for the benefit of all concerned.

In marine insurance the same general principles respecting insurable interest are applicable as in fire insurance. The owner of a ship has an insurable interest in it at all times, even though it has been chartered by one who covenants to pay him its value in case of loss, and has also an insurable interest in expected

freight which would have been earned were it not for the intervention of the peril insured against. One who loans money on bottomry may likewise insure his interest in the ship to the amount of his loan.

The insurable interest in fire and marine insurance must not only exist when the risk is assumed, but also at the time the loss occurs. In life insurance, however, it may cease any time after the contract is made. Thus a creditor who has taken out a policy on the life of his debtor, may at his death recover the full amount of the insurance, even though the debt has been paid previously. Life insurance for this reason is not a contract of strict indemnity, but is so governed by that doctrine as to prevent it from being a wagering contract at its inception. The rules of recovery in cases of fire and marine insurance differ in the event of partial loss of the property insured. In fire insurance the insured is entitled to recover his damages up to the amount of the policy. In marine insurance, where the value of the policy is not specifically fixed (which is seldom done), the insured can recover only such proportion of the amount insured as the loss bears to the value of the entire interest of the insured in the ship. For example, if a property is insured for $10,000, which is worth $20,000, and a loss of $5,000 by fire occurs, the insured may recover his entire loss in full, but if a man has a marine policy for $10,000 on a cargo worth $20,000, and a loss of $5,000 occurs, he will recover only $2,500.

Insurance on property is in the nature of a personal contract and hence does not pass to the new owner by virtue of a transfer of the property. It is therefore necessary for one acquiring title to a property to take out new policies or have the proper indorsements consenting to the transfer made by the insurance company on the old policy.

If a person takes out a policy of insurance on his life and names another as beneficiary, the latter acquires a vested interest which cannot be interfered with by assignment or will without his consent, or some provision in the policy. If a husband names his wife as beneficiary and pays all the premiums with money embezzled from his firm, the proceeds of the policy would belong to the firm, but if he paid the first premium with his own money and subsequent premiums with money embezzled from another, the value of the policy would be payable to his wife, but the defrauded party would have a lien upon the proceeds of the policy for the amount of money embezzled from him.

When the risk attaches, the insured under the usual form of policy becomes debtor to the insurer (the company) for the first

premium. The relation of debtor does not exist, however, in regard to future premiums, the payment of which is merely made a condition, the performance of which is necessary in order to continue the contract. As a general rule, an interest in an insurance policy is not subject to attachment or execution, being what is known in law as a "chose in action."

With these brief observations upon insurance in general, it is hoped the reader will be better able to intelligently undertake the study of its separate branches, the first study of which will be life insurance.

It has been pointed out that public policy required every contract of life insurance to be supported by an insurable interest, which is such as would justify the reasonable expectation of advantage or benefit from the continuance of the life of the insured. Otherwise life insurance would be a mere wager on human life, which would instigate the grossest crimes. It has been held that where an insurable interest exists at the time life insurance is effected, the fact that the interest ceases to exist subsequently will not destroy any rights under the policy.

A husband has an insurable interest in the life of his wife, and *vice versa;* a parent in the life of a child and *vice versa*, and a creditor in the life of his debtor. But a brother or sister has not an insurable interest in the life of the other, nor a nephew in the life of his aunt or uncle, but circumstances may possibly exist which would take these cases out of the rule.

Every person has an insurable interest in his own life which will support a policy taken by him in favor of himself or his estate. There is no reason of public policy why one who procures insurance on his own life should not make the benefit payable to another without regard to whether the latter has any insurable interest. An assignee in bankruptcy has no insurable interest in the life of the bankrupt after his discharge. A man may, however, insure his own life and have the policy payable to another, provided he pays the premiums himself. If a man insures his life in the name of B, reputed to be his wife, and after his death it appears that she is not his lawful wife, her right to the proceeds cannot be contested. If a policy is taken out by one who has an insurable interest, for the purpose of transferring it to one who has not such an interest, the assignee without interest has no right to the proceeds. An aunt who stands *in loco parentis* to a minor child, a nephew, may take out an industrial policy on his life.

The Application.

The requisites which must be specified to make a valid policy are the names or description of the parties, the rate of premium,

the life insured, the risks insured against, and the term or duration of the insurance.

The application constitutes an essential part of the contract of insurance, and the insured is bound in making his application to disclose all facts that may be material to the risk. The contract of insurance is one requiring good faith between the parties, and fraudulent dealing at any stage, either before or after the issuance of the policy, is fatal to the rights of the party responsible. The party effecting the insurance must make truthful answers to all questions in the application, and is in duty bound to make a frank and honest disclosure of those circumstances which are likely to affect the insurer's estimate of the risk. If a person answers in the negative the question as to whether or not he was insured in any other company, or had made application for insurance and had been refused, and such answer is proved to be false, the policy will be held to be void.

Formerly it was held that any false warranty would invalidate a policy, but subsequent legislation in most states has remedied this defect by providing that whenever the application for a policy of life insurance contains a clause of warranty of the truth of the answers therein contained, no misrepresentation or untrue statement in such application made in good faith by the applicant, shall effect a forfeiture or be a ground of defense in any suit brought upon any policy of insurance issued upon the faith of such application, unless such misrepresentation, or untrue statement relate to some matter material to the risk. It is further provided that whenever a wrong age has been given in good faith in an application for a policy of life insurance, the company shall not be required to pay the face value of the policy, but must pay such sum as the premium paid would have purchased at the applicant's real age at the time of effecting the insurance. It will, therefore, be seen that only such untrue statements as are material to the risk will invalidate a contract of life insurance.

In connection with the application for life insurance, the distinction between a warranty and representation must be clearly understood. A warranty is a statement of fact or promise of performance, relating to the subject of insurance or to the risk, which must be literally true or strictly complied with, otherwise the contract may be avoided. A representation is in the nature of a collateral inducement to the contract, and it is an agreement that the fact stated is true, but only such a statement as will constitute a misrepresentation, if it be untrue. A material misrepresentation of fact, whether intentional or unintentional, will void the contract.

Whether a statement shall be taken as a warranty is a question of interpretation to be ascertained as in other contracts, but the rule seems to be that such representations are warranties when it is apparent that they had in themselves or in view of the parties a tendency to induce the insurer to enter into the contract on more favorable terms.

The answer in the application that the "health is good" means that the one who seeks insurance is free from any ailment that seriously affects his general soundness and healthfulness. A representation that the applicant is a single man will avoid a policy if the applicant be married. It is also material to the risk assumed that the occupation of the applicant be correctly stated. If an applicant is addicted to habitual excessive indulgence in liquor and states in the application that he is temperate in the use of intoxicating liquors, the policy may be avoided. If, however, the insured was a temperate man at the time the policy of insurance was granted, the fact that he subsequently contracted the habit of excessive drinking and died of delirium tremens will not prevent the beneficiary from recovering the value of the policy.

The contract of insurance is made in the same manner as any other contract, *i. e.*, by offer and acceptance. The application constitutes the offer, the issuing of the policy, the acceptance, and the contract is completed by delivery of the policy.

The parties to a contract of life insurance are (1) the insurer, who may be any person competent to assume the risk, or any corporation authorized by law to engage in such business, and who becomes obligated to pay a certain sum to another in the event of the death of a certain named person; (2) the insured, which term applies to two different persons, (*a*) the insured may be the person upon whose death the amount of insurance money must be paid, or (*b*) the person who pays the premiums may be the insured; and (3) the beneficiary, who is the party to whom the insurance money must be paid upon the death of the insured.

The Consideration for the Policy.

The premium to be paid is the consideration for issuing the policy. The premium is regulated by the amount of insurance, the age, occupation, habits and sex of the insured. Ordinarily payment of the premium must be made before the risk attaches. The payment of the premium, delivery of the policy and subsequent assumption of the risk are usually coincident. Premiums may be paid in either cash or by promissory notes. Where the insurance company accepts the promissory note of the insured for

the first premium, the policy containing a recital of the payment of the premium, but the note, of even date therewith, providing that non-payment thereof shall void the policy, the note modifies the contract contained in the policy, and no recovery can be had upon the latter, if the note is not paid at maturity.

Most policies stipulate a forfeiture of all rights under it upon default of payments of the premiums, but a policy cannot be forfeited for non-payment of premiums where there is no provision in the policy to this effect. Furthermore, a policy cannot be forfeited where the insurer (the company) has in its possession dividends belonging to the policyholder more than enough to pay the premium. Profits earned and not declared as dividends cannot be treated as funds in the hands of the insurance company to be applied to the payment of a premium.

Where a life insurance policy provides that premiums shall be paid quarterly, on certain dates, or within thirty days thereafter, during the continuance of the policy, the company is liable, where the insured dies within thirty days, but before the payment of the premium, which is paid prior to the expiration of such time, the fact that the insured was unable by reason of sickness to pay a premium when due will not prevent a forfeiture.

If the insured has been in default in the payment of premiums for a considerable length of time, the default cannot be excused by showing that the company failed to give notice of the fact that the premium was due in accordance with its usual custom, since in such case the default cannot be attributed to the misleading effect of the company's course of business.

Forfeiture, however, is odious to the law and cannot be enforced if the company in any way waived its right to collect the premiums at the time named. It has consequently been held that the company has waived prompt payment of premiums and hence cannot declare a forfeiture of the policy if it has adopted a custom of accepting premiums thirty or sixty days after due. It is not a waiver if the company fails to observe its custom by sending notices when premiums are payable.

Payment of a premium by the insured to a person expressly or impliedly authorized to receive same is a payment to the company.

When a life insurance policy provides that on failure to pay a premium when due, and in the lifetime of the insured, the policy shall be void, and further provides that no person except the president and secretary of the company, acting together, shall have authority to alter the contract or waive a forfeiture, a general agent of the company has no authority to receive overdue

premiums after the death of the insured, unless the company has expressly or impliedly given him such authority. This authority will not be implied from the fact that said agent had been in the habit of receiving and in fact had authority to receive premiums and deliver renewal receipts after maturity where the insured was at the time in good health. The insured cannot set up as an excuse that he had agreed with an agent of the company that the latter should credit the premium on a debt the agent owed to the insured.

Mere silence will not give consent to a request of the insured for a renewal of the policy. A renewal receipt which purports to renew an expired policy is admissible as evidence of a contract for such renewal.

The life insured is the subject-matter of the contract of life insurance, and certain restrictions are usually imposed by the insurance company upon the life so insured, principal among which are those relating to travel, occupation, military and naval service and manner of death. With reference to restriction upon occupation, engaging in the manufacture of gunpowder or dangerous chemicals, or becoming a fireman, locomotive engineer or miner, will defeat recovery if death occurs while following such occupations stipulated against. As some occupations are more hazardous than others, certain companies provide in their policies that the insured shall not change his occupation without the company's knowledge and consent.

It is a general condition of life insurance policies that the insured shall not enter the military and naval service without the consent of the insurance company. If this restriction is violated the policy may be avoided. Too much stress cannot be laid upon the necessity of carefully reading the policy and becoming familiar with its terms and strictly complying therewith. Oversight in this regard is frequently fatal. The answers to the application should be truthful, the premiums promptly paid, care being taken to make payment to that agent of the company within the scope of whose employment it is to accept such premiums, and conditions as to notifying company of change in occupation, foreign residence, etc., complied with.

The principal restrictions upon the manner of death are that it must not occur in violation of law, by suicide or duel. The policy will be void if the insured meets with death while engaged in the perpetration of an unlawful act, such as burglary. If the insured has committed murder for which he is hanged, the policy will be void. A policy will also become void if the insured dies as a result of a criminal operation or attempted abortion.

If a policy of life insurance which is silent as to suicide by the insured is made payable to one who has an insurable interest in the life of the insured, suicide by the insured will not defeat a recovery upon the policy. But it has been held (although some doubt still exists) that where the policy is payable to the estate of the insured, suicide will prevent any recovery on the policy by his personal representatives, although there is no stipulation against it.

A stipulation against suicide does not avoid the policy where nothing is said as to sanity or insanity of the insured at the time of the suicide, unless the insured is possessed of sufficient mental capacity to form an intelligent intent to take his life. It has been held that if the insured committed suicide while insane, and the policy was silent as to the sanity or insanity of the insured, the company is liable, even though the insured intended to take his life and knew that death would be the result of his act. If the policy contains the condition that the policy shall become void if the insured takes his own life, while sane or insane, no recovery can be had, if the insured commits suicide while insane. A policy providing for a forfeiture in case the insured shall, by an unlawful act, take his own life, is not forfeited where the insured, while trespassing on a train of cars, is thrown under the wheels and killed. Where death may be the result of either accident or suicide, the presumption is always against suicide.

It is a general rule of law that a policy of insurance must be construed most strongly against the insurer (the company). Consequently where any doubt exists as to the meaning of the policy, or where it is capable of two interpretations, each equally reasonable, that one must be adopted which is most favorable to the insured. Where the written and printed portion of a policy conflict the latter must yield to the former.

Assignment.

The beneficiary may assign a policy of life insurance, but this should be done with the knowledge and consent of the insurer, and must be made to one who has an insurable interest in the life insured, either as creditor, surety or relative by blood or marriage. The insured has no right to assign the policy unless he be the beneficiary and pay the premiums. There may be a valid assignment of a life insurance policy by gift (by mere delivery thereof), without assignment or indorsement in writing. Delivery, however, is essential where there is no consideration, even though the assignment be in writing under seal. To illustrate: Where the insured places his policy in a sealed envel-

ope, addressed to a person to whom it is delivered after the death of the insured, together with an assignment in trust for the insured's children, and neither the trustee nor the children have any knowledge of the transaction, and the envelope remains in the insured's possession, there is no valid gift. Where an assignment is inoperative, such as for want of delivery, it may, nevertheless, take effect as a direction, given at the time the policy was issued, to pay the insurance to the assignee, where it appears that the assignment was executed before the policy was taken from the insurer's office, and that a copy of it was filed with the company.

Where the subscribing witness to an assignment of a life insurance policy, executed by the insured to his wife and children, attests its sealing and delivery, and the wife dies before the husband, the fact that the policy and the assignment are found among his papers at his death, would not be sufficient to overcome the presumption that the assignment was delivered. If proof is given that a life insurance policy was taken out, expressed to be for the benefit of the insured's intended wife, but which for motives of delicacy on her part, was made payable to his legal representative, and which after their marriage was acknowledged as the wife's, but was placed in a box containing their common papers and deposited in the wife's trunk, it would be held sufficient evidence as against the husband's relatives, to prove a gift to the wife. If a man takes out a policy on his own life for the benefit of a child, this constitutes a gift of the policy to such child, although the policy remains in the possession of the insured.

The payment of premiums by a creditor on his debtor's life insurance, and the fact that the premium receipt book is in his possession, do not amount to an assignment of the policy and will not give the creditor any interest therein.

The insurance company has the right to choose the persons with whom it will contract, and a stipulation in the policy that it shall not be transferred without the consent of the insurer is merely the exercise of that right, and its validity is undoubted.

Where the beneficiary has assigned his interest in a policy to a creditor, the fact that the assignment was not approved by the company before the death of the insured cannot be set up in defense, the requirement of approval being intended solely for the benefit of the company. The assignment of a policy in compliance with the regulations of the company, does not constitute a new insurance, and questions as to the necessity of a full disclosure of facts apply to the issuing of the policy and not to the assignment. Where a woman took out a policy on her life,

payable to her executors, and afterwards gave it to her daughter-in-law with instructions to pay the premiums, pay the insured's funeral expenses, and if anything was left to give it to the granddaughter of the insured, it was held that the failure to disclose this arrangement did not amount to a fraud on the insurer.

A stipulation in a policy that in case of an assignment the assignee shall be liable for the unpaid premium, is merely a personal contract, and gives the insurance company no right of action against the assignee. Where an assignment is made for the purpose of securing a creditor, the assignee, although entitled to receive the face value of the policy can hold only such amount as is necessary for his indemnity. The legal representatives of the debtor will be entitled to the balance.

Cancelation.

A contract of insurance, like any other, requires the consent of both parties to cancel or rescind it, unless by its own terms a right to do so is given to either party alone, and if such right is given upon conditions, they must be fully complied with before the right can be exercised.

Where a policy of life insurance is unlawfully forfeited by the insurance company for non-payment of premiums, the insured may recover back the premiums paid by him on the policy while it was in force, with interest from the time of demand. The fact that the risk had attached, and had been carried during the time the premiums were paid, is no defense. Where a company, not knowing that a policy made payable to the insured or to any other person appearing to be equitably entitled was in reality for the benefit of a creditor, by whom the premium was paid, arbitrarily canceled the policy, and retained the premiums, it was held that the creditor had a right of action to recover the premiums paid by him. A contract of insurance cannot be canceled without notice to the insured, and conversely, the insured will be liable to pay the premium until he notifies the company to cancel his policy.

Notice and Proof of Death.

The terms of the policy determine when it falls due, and the amount of the insurance is usually payable within a certain time mentioned in the policy after the death of the insured. This time is generally sixty or ninety days after notice and proof of death. The notice and proof of death must be made in strict compliance with the requirements of the policy, which usually prescribes certain formalities and a course of procedure. Where

a policy does not require notice of the death of the insured to be given to the company there is nothing in the nature of the contract requiring such notice or demand before bringing suit. Proof of death made on a blank certificate furnished by the company, stating that the claimant believed from all the circumstances that the insured was murdered, giving the place at which the murder was supposed to have been committed, and the date, has been held sufficient. If a company has issued two policies upon the life of the same person, both calling for the same mode of proof of death, and upon the decease of the insured the company accepts without objection proofs of death under one policy, the representatives of the insured are not bound, in the absence of a special contract to that effect, to furnish further proofs of loss under the second policy. If an officer of an insurance company states that the company will not pay a loss, it constitutes a waiver of proof of death. It is advisable, however, even where liability is denied, to submit proof of death in strict conformity with the requirements of the policy of insurance, and to avoid having the proof of death challenged, it should be supplied upon the forms furnished by the insurer.

Discriminations Prohibited.

In some states there are statutes prohibiting any discrimination by life insurance companies between insurants of the same class as to rates, dividends or benefits, or the allowance of any valuable consideration not specified in the policy, as an inducement to insurance and contracts in violation of such a prohibition are illegal and void. A provision for issuing a first year term policy with the privilege of taking a whole life policy at the end of the first year is not unlawful on the ground of discrimination, as such a contract is not in its entirety the equivalent of a simple term policy, and the insured therefore are not of the same class. Nor is such a statute violated by discrimination as to distribution of surplus between those who die within an accumulation period and those who survive such period, or by a contract by which the company, in consideration of the insurance, agrees to make a loan to the insured.

Accident Insurance.

Certain general principles with reference to insurable interest, duty of full disclosure, etc., are applicable to all forms of insurance and it will be unnecessary in taking up the several branches of insurance to reiterate what has been discussed heretofore. There are, however, certain features peculiar to each form of insurance which it is essential to emphasize.

Accident insurance is a branch of life insurance, which protects against loss caused by accident, whether occasioned by a bodily disability or fortuitous death. In common parlance an accident means any unfortunate happening, but in a legal sense it means any unexpected event which happens as by chance, or which does not take place according to the usual course of events. An injury is not accidental if it happened through the concurrence of the will or intent of the insured. An accidental injury may, however, be the result of the intentional act of the insured, provided the result could not have been foreseen. For example, an injury to the insured caused by intentionally jumping from the platform of a train of cars under such excusable circumstances that no harm could have reasonably been expected to follow would be accidental and entitle the insured to recover. Likewise the unintentional taking of poison, the sprain of one's ankle by lifting heavy weights, etc.

The usual accident insurance policy protects the insured from injuries or disabilities caused by "external, violent and accidental means." The policy usually prescribes the nature of the accident for which recovery may be had, in which event there can be no recovery for accidents of a different nature than those stipulated.

Unless expressly excluded by the terms of the policy, an accident covers an injury intentionally inflicted upon the insured by another, as, for example, in an affray or fight. If, on the other hand, such an injury is excluded, the restriction of the contract will prevail.

A sunstroke, when not expressly excluded from the operation of the policy, is generally considered to be a disease rather than an accident. Accidental injury is a phrase of such broad scope that its application has been limited by many restrictive provisions, differing somewhat in the forms of policies adopted by the different companies. A policy of accident insurance is a contract providing for the payment to the insured of a specified sum per week (regulated by the amount of insurance), during disability resulting from bodily injuries effected through external, violent and accidental means, which shall, independently of all other causes, immediately and wholly disable the insured from transacting any and every kind of business pertaining to his occupation. The ordinary accident policy also provides for the payment of a certain sum in case of loss by severance of one entire hand or foot, etc., or if death results from such injuries within ninety days. The application should be carefully read, answers truthfully made, premiums promptly paid and other conditions strictly complied with.

Construction of Terms in Accident Policies.

Death by accidental drowning has been construed to be by "external, violent and accidental" means, although the cause is internal.

The provision that the injury insured against must be effected by the means specified, "independently of all other causes" is so unreasonable, indefinite and repugnant to the main purpose of the contract that it has been construed by the courts very strictly against the insurance companies. Thus in a policy which excepted as a risk death resulting from fits, the insurance will be held to cover a case where the insured was seized with a fit and fell under the wheels of a locomotive and was killed. If from a shot in the back the insured has paralysis of the feet, it will be held to be a loss of "two entire feet." The courts have also held that death caused by fright was an accident and within the protection of a policy, although this is rather an extreme case.

The disability covered by the policy must result within a reasonable time after the injury, the word "immediately" not requiring the disability to be instantaneous. The disability must, however, be total; but the fact that the insured is able to perform certain portions of his accustomed work does not prevent the disability from being construed as total. The occupation of the insured is always considered in this connection.

The term "occupation" has reference to the usual or regular calling or profession, and not to accidental acts and duties. An accidental engagement in work involving greater risk will not avoid the policy, unless such occupation is specially excepted.

Injuries resulting from violation of the law are not covered by an accident insurance policy. Most accident policies contain a stipulation that no claim shall be valid where injury or death result from voluntary exposure to unnecessary danger or perilous adventure. Voluntary exposure is held by the law to mean intentional exposure, and a provision will not prevent a recovery in a case where the act is voluntary, but the danger unforeseen. If reasonable or ordinary prudence would pronounce an exposure dangerous, the insured cannot recover, and whether or not such an exposure was made is a matter of fact for a jury to determine under the circumstances. Injury or death resulting from disease or medical treatment are excepted risks for which no recovery can be had in most accident policies.

If medical treatment is necessary as the natural consequence of an accidental injury, such as a surgical operation, and the insured should die, the company cannot avoid its liability under

the policy on the ground that death resulted from medical treatment. The insured is given the benefit of the doubt.

Where a policy provides that the company shall not be liable for injuries to the insured received while intoxicated, such provision covers all cases where the insured is so far under the influence of intoxicants as to be unable to properly take care of his personal safety, irrespective of the actual cause of the injury or the degree of the drunkenness.

Most companies except as a risk accidents happening while walking or being on the bed or roadway of a railroad, or while riding on the platform or of getting on or off a railroad car. The Supreme Court of Pennsylvania has held that an accident caused by the insured stepping off a railroad train at night would not be included in such exception, and it is also the law that the insured would not be prevented from recovering if he was injured while crossing a track, if he took all due precautions. However, if the insured is killed while walking on the roadbed between the tracks, when he might have used a sidewalk, the exception applies.

Most policies will not protect against the voluntary or involuntary taking of poison. In such cases the courts have limited the scope of this clause to the internal reception of a poisonous substance. Hence death due to the external contact with an unknown poisonous substance would be an accident which would justify recovery under the policy.

Policies insuring against injuries while riding as a passenger in or on a public conveyance cover injuries received while in the actual prosecution of a journey, whether insured was at the time in a conveyance for transportation of passengers or not. Generally speaking walking cannot be held to be "traveling by public or private conveyance," but the Supreme Court of the United States has held that under such a policy the insured could recover from an injury received by a fall on a sidewalk when walking from a steamboat landing to a railway station, this walk being usual for travelers on that route, although the insured might have ridden in a hack.

Notice or Proof of Injury or Death.

Notice and proof of injury or death is required by all policies to be promptly given, the time limit varying in different companies. Where the circumstances of the accident are such as to render it impossible to comply with the conditions as to notice and proof, giving notice within a reasonable time after it becomes possible to do so has been held sufficient.

The holder of an accident policy should promptly notify the

company of any change in employment and should avoid voluntary exposure to danger, trespassing on railroads and intoxication; he should also promptly notify the company of any accident. Non-observance of these precautions will forfeit the policy.

Fire Insurance.

A contract of fire insurance is a contract to indemnify the insured for a specified period against loss or damage to his property caused by fire. Such a contract of fire insurance must have all the elements of an ordinary contract. It is provided by statute that only companies incorporated for the purpose can execute a policy of fire insurance.

As in other forms of insurance, so in fire insurance, the insured must have an insurable interest in the subject-matter of the insurance. An insurance on property is not an insurance of the specific thing without regard to ownership, but is a special agreement of indemnity with the person, insuring him against such loss or damage as he may sustain, and no recovery can be had where the insured has parted with his ownership. It may be stated as a general rule of law that any direct pecuniary interest in the property insured, which may be injured by the occurrence of the risk insured against, constitutes an insurable interest. The holder of either legal or equitable title in property has such an interest, and in case of a loss, a trustee may recover the full amount of the policy. If the insured took out his insurance in good faith, under a reasonable belief that he had title, his want of title would not be a defense to an action on a policy. A stockholder has no insurable interest in the property of a corporation. An insurable interest must be capable of enforcement in law or equity, and it has therefore been held that a turnpike company has no insurable interest in a public county bridge on the line of its road, but free to all travel, even though the company voluntarily contributed to the cost of the erection and maintenance of the bridge.

An applicant for fire insurance should set forth the amount of his interest in the property to be covered, and should make a full and accurate disclosure of all facts affecting the risk assumed. But unless the insured has knowledge that a particular fact will increase the risk, he is not bound to report such fact to the company, although there is a warranty in the policy that the insured has not omitted to state information material to the risk.

The premium paid is the consideration for the policy of fire insurance, which should be certain in amount and based upon a proportionate rate of the value at risk and the probabilities of loss by fire.

In fire insurance the risk is the contingency upon the happening of which the liability of the insurer attaches. Loss by fire means the result of the ignition of the property insured. To illustrate, where sugar was spoiled by great heat from a fire, the insurance company was held not liable, and likewise where the heat of the sun contracted timber without any actual fire. Fire originating in spontaneous combustion is within the risk. Damage caused by concussion caused by an explosion of gunpowder in another building is not within the risk. The ordinary fire insurance policy includes loss by the incendiary act of the insured if insane, and also includes the unintentional or careless acts of third persons, whether his agents or not. If, however, the fire is caused by the wilful act of the insured himself, or of some one acting with his consent or knowledge, the insurer will, of course, be exonerated. Arson by the wife of the insured without his connivance would be no defense to the company.

The duration of the risk is limited by the terms of the policy, the risk commencing as soon as the policy is executed. A fire insurance policy is said to be executed when the application of the party seeking protection is accepted by the company and a policy delivered in accordance therewith. The date of the contract of insurance is usually the date of the policy. It has been held that the risk commences as soon as the offer is accepted, even if the premium has not been paid and the policy not delivered.

The policy usually sets forth the amount of the insurance, which, as a general rule, is three-fourths or two-thirds of the value of the property.

Excepted Risks.

The ordinary fire insurance policy usually excepts certain risks from those protected against, the most common of which is loss caused directly or indirectly by invasion, insurrection, riot, civil war or military or usurped power, or by order of any civil authority. In such cases the company will not be liable. The company shall not be liable for loss caused by the neglect of the insured to use all reasonable means to save and preserve the property at and after a fire, or when the property is endangered by fire in neighboring premises. A policy of insurance against loss or damage by fire does not include a loss caused by removing goods from a store at a time when nearby buildings were on fire, when, as a matter of fact, the building containing the insured goods was not injured by the fire, though the insured supposed they would be. Goods stolen during a fire cannot be included in the loss recoverable on the policy.

As considerable damage is often caused by explosions, and fire frequently follows explosions, it is difficult to distinguish between the loss caused by the explosion and the loss caused by fire. For the latter the company will be liable; for the former it will not. The average policy excepts as a risk loss by explosion of any kind or lightning (unless fire ensues, and, in that event, for the damage by fire only). Liability for direct damage by lightning may be assumed by specific agreement, however. The company will be liable for loss caused by fire originating from the explosion of a lamp on the insured premises, and where the insured property was blown up with gunpowder for purposes of safety would not relieve the insurance company from liability, even though the policy excepted from its operation a loss by the explosion of gunpowder.

If a building or any part thereof fall, except as the result of a fire, all insurance on such building or its contents ceases. An insurance company is not liable for loss of accounts, bills, currency, deeds, evidences of debt, money, notes or securities. If such property were covered by the policy the insurers would be subjected to claims of uncertain amount and very difficult of verification. If a loss by fire is admitted, the burden of proof is on the company claiming exemption from liability to show that it falls within the exceptions.

Description and Location of Property.

It is necessary that the property insured be accurately described, but where the agent of an insurance company, with a full knowledge of the character of the property, fills up the application, the insured is not responsible for an erroneous description. It is also necessary that the location of the property be stated accurately. Place is ordinarily material to the contract and of the very essence of the risk, and a change of locality without the consent of the company removes the goods from the protection of the policy, though it contains no special provision to that effect. If consent to removal is obtained goods are not protected in transit unless the policy so provides.

Adjustment of Loss.

In case of fire, whether the loss be partial or total, the general rule of damages is that the insurer is bound to pay only so much as will indemnify the insured. In other words, the company is not liable beyond the actual cash value of the property at the time of loss, with proper deduction for depreciation, however caused. This rule excludes remote damages, such as loss

from interruption of business, prospective rent or profit, etc. The difference between the actual cash value of the property just before the fire and its value after the fire is the measure of indemnity where the property has been injured and not destroyed. The insured has the right to be indemnified not only for loss by fire, but also for all losses that are the immediate results of the fire. Upon the occurrence of a loss it is the duty of the insured to give to the company (the insurer) proof and notice of the loss, which should be certified to upon oath. In making proof of loss, all the terms and conditions of the policy should be strictly and literally complied with.

Causes Rendering Policy Void.

The standard fire policy provides that it shall be void (unless otherwise provided by agreement indorsed upon or added to the policy), if the insured "has or shall hereafter make or procure any other contract of insurance whether valid or not, on property covered in whole or in part by the policy." This has been held to be a reasonable regulation, and the requirement to give notice of any other insurance upon the same property is applicable to subsequent as well as pre-existing insurance.

Unless special provision be made to the contrary, the entire policy shall be void if the subject of insurance be a manufacturing establishment and if it be operated in whole or in part at night later than ten o'clock, or if it ceases to be operated for more than ten consecutive days. Where, however, a company deliberately insures an idle establishment, knowing the extent of the hazard, the above proviso will not prevent recovery.

The entire policy shall be void if the hazard be increased by any means within the control or knowledge of the insured. This provision is intended to protect the property from fire, by change in structure, methods of heating, addition of new outbuildings and the like. The temporary use of benzine in an insured building for the purpose of cleansing furniture is not within a condition against increase of risk by any means within the power of the insured, although the loss results from the use of the benzine. It is a good precaution to notify the company of any facts increasing the risk and obtain the written consent of the secretary to a continuance of the policy. It has been held that if a risk is increased contrary to the provisions of a policy, the company is absolved from the contract although the fire does not result from the increase of risk. A decrease of risk by removal of a building from the insured premises cannot be set off against an increase of risk in violation of a condition in the policy.

It is ordinarily provided that the entire policy shall be void if mechanics be employed in building, altering or repairing the property covered by the insurance for more than fifteen days at any one time.

The entire policy shall be void if the interest of the insured be other than unconditional and sole ownership, or if the subject of insurance be a building on ground not owned by the insured in fee simple; or if the subject of insurance be personal property and be or become incumbered by a chattel mortgage; or if, with the knowledge of the insured, foreclosure proceedings be commenced or notice of sale of any property covered by the policy by virtue of any mortgage or trust deed be given, or if any change, other than the death of the insured take place in the interest, title or possession of the subject of insurance (except change of occupants without increase of hazard) whether by legal process or judgment or by voluntary act of insured or otherwise.

A clause in a fire policy providing that it shall be void if the property insured be levied upon or taken into possession under legal process is not broken by a merely technical levy, without any actual seizure or change of possession of the goods or land. Nor is such a condition broken by the entry of judgment on a bond accompanying a mortgage and the levying of execution on the property, where the loss occurs before the sheriff's sale.

With reference to the "entire, unconditional and sole ownership" of the property insured, this requirement is not broken by executing a bill of sale of personal property, either before or after the issuance of a policy of insurance thereon, where the bill of sale is executed for money lent and the insured retains exclusive possession of the property. Hence a bill of sale given to a money loan company would not be a breach of this condition if the borrower retained possession of the goods. The condition as to "unconditional and sole ownership" relates to the ownership of the property at the date of the issuance of the policy, and not at the date when the loss occurs.

In regard to the conditions against the transfer of the property insured, if a policy contains such a condition and the property insured be sold or transferred without the consent of the company, the right to recover on the policy will be lost without any act of forfeiture by the company. Notice to the company of an assignment of the policy is not notice of a transfer of the insured property. An assignment in bankruptcy of the property insured is not a transfer within the meaning of the condition under consideration.

A policy of fire insurance is in the nature of a personal contract between the insured and the insurer, and the insured cannot

transfer the policy to any third person without the express consent of the insured.

Assignment.

If a policy be assigned before the loss occurs without the consent of the company indorsed thereon, it will be void, but this rule does not apply to an assignment of an interest in a policy of fire insurance after the loss occurs. The receipt of premiums for several years by the treasurer or manager of a fire insurance company, with the knowledge of transfer of the property and policy without the approval of the company, will estop (prevent) the company from setting up a forfeiture of the policy by reason of such transfer. Any condition prohibiting the assignment of the policy after a loss, or any claim arising under it without the consent of the company, is void.

A fire insurance company cannot refuse to approve the assignment of a perpetual policy to one who has become the owner of the insured property, provided the assignee is a person whose financial condition, habits of life and moral character are such as do not increase the hazard of loss. For this reason a company could refuse to approve an assignment of a perpetual fire policy to one who has been convicted of arson or incendiarism. If a company should wrongfully refuse to approve a transfer, the assignee can bring an action for damages in his own name and may recover the cost of procuring perpetual insurance for the same amount.

Vacancy.

The company has a right to know whether the subject of insurance is receiving ordinary supervision or is being neglected. If the property insured is a dwelling it must have an occupant living in it. In the case of other property it must have that kind of care and superintendence which naturally belongs to the character of the occupancy and property described in the policy. Consequently a condition is made in many policies that if the building insured, whether intended for occupancy by owner or tenant, becomes vacant or unoccupied and so remains for ten days, the company shall not be liable for loss.

Misrepresentation.

The entire policy shall be void if the insured has concealed or misrepresented, in writing or otherwise, any material fact or circumstances concerning the insurance or the subject thereof, or if the interest of the insured in the property be not truthfully stated, or in case of any fraud or false swearing by the insured

touching any matter relating to the insurance or the subject thereof, either before or after the loss.

Notice of Loss.

It is the duty of the insured immediately upon the occurrence of a fire to notify promptly the company in writing of any loss sustained thereby. Strict attention should be given to the requirements of the contract in this regard, to limit the loss so far as it is possible to do so, and to give an opportunity to the company to take such measures with promptness as may seem wise to them to effect the same result. The insured must furnish the company with all reasonable evidence to enable it to determine the nature and extent of the loss. A proper mailing of a notice of loss is a sufficient compliance with the requirement of the policy that immediate notice of loss must be given in writing.

The requirement of furnishing notice of loss by fire is regulated by statutes which usually provide that when any property shall be destroyed by fire within a state, which is covered by fire insurance, the conditions of the contract as to the notice of loss and the furnishing of preliminary proofs shall be deemed to have been complied with if the insured or his assignee shall furnish the company at its general office, or to the agent of the company who countersigned the policy of insurance, the notice of loss within a fixed time from the date of the fire, and the preliminary proofs within a fixed time from said date. In case the agent who countersigned the policy of insurance shall have been removed or succeeded by some other agent of the company after such policy was written and prior to the date of the fire, then the notice and preliminary proofs may be served on any other agent of the company authorized to effect contracts of insurance and countersign policies of any such insurance companies.

Where a policy of fire insurance stipulates that the insured shall furnish a particular statement of the loss, in the absence of such proof or waiver thereof the insured cannot recover. When there is a stipulation that the insured shall produce for examination all books of account, bills, invoices and other vouchers, or certified copies thereof, if originals are lost, there can be no recovery on the policy unless the proofs have been furnished, or it is shown that the insured has made every effort to furnish them. The fact that the insured becomes insane about the time his property is burned does not render unnecessary a compliance with the condition of the policy requiring specific proofs of loss.

A contract of insurance, which by its terms is entire, will not be forfeited as to all property covered, on account of failure of proofs as to part of the property, unless so provided in the policy.

A provision in a policy prescribing the time within which a notice of loss is to be given, will not be construed as a cause of forfeiture, unless so stipulated in the policy, and where a policy provides that notice of loss shall be given within twenty-four hours, but provides no forfeiture for failure to do so, the insured may recover if he gives notice within a reasonable time after he knows of the loss.

If the property insured is personal property it is the duty of the insured to separate the damaged from the undamaged property and make an inventory, stating the quality and cost of each article and the amount claimed thereon. Proofs of loss made and sworn to by the insured and containing a valuation of the property destroyed are not conclusive. The insured may consequently prove and recover upon a higher valuation if he can show that he submitted the proofs in ignorance of his legal rights. Where the insured knowingly and wilfully swears to false proofs of loss the policy is thereby forfeited.

The Company's Liability.

The insurance company shall not be liable beyond the actual cash value of the property at the time any loss or damage occurs, with proper deductions for depreciation, however caused. Where a loss occurs under a fire policy the valuation of the property in the policy is not controlling proof of actual value. The value shall in no event exceed what it would then cost the insured to repair or replace the same with material of the same kind and quality.

It is optional with the company to repair, rebuild and replace the property lost or damaged with other of like kind and quality within a reasonable time, on giving notice within thirty days after receipt of the proofs required, of its intention so to do. The privilege reserved by insurance companies to repair or replace the property destroyed by fire is a reservation for the benefit of the company, which they may adopt or not, as they think proper, but the election once made becomes an absolute agreement and fixes the rights and duties of the parties.

In the event of a disagreement as to the amount of loss suffered, it is usually provided in the policy that the same shall be ascertained by two competent and disinterested appraisers. This is called the appraisal or arbitration clause, and is very important to the companies in many instances to relieve them from extravagant or fraudulent claims. Where appraisers have been appointed to determine the amount of loss, the same does not become payable until sixty days after their report is furnished.

The insurance company is not liable for a greater proportion of any loss on the property insured than the amount insured shall bear to the total amount of insurance covering such property. This provision relates to two or more insurances of the same interest, and not to insurances of different interests, though upon the same property. The object of this provision contained in every policy is to prevent circuity of action. Without it, in any case of double insurance, the insured might bring his action against any one company for the whole amount of loss up to the extent of the policy, leaving the co-insurers to settle their respective objections under the equitable doctrine of contribution; under the provision mentioned the insured can sue one company only for its ratable proportion of the loss.

When different policies contain similar terms, and are concurrent, there is little difficulty in dividing the loss proportionately among them; but when the policies cover in part the same, and in part different property, and contain different and inconsistent provisions applicable to the one loss, it may readily be seen that it is simply impossible to adjust the loss in strict conformity to the requirements of their repugnant conditions. The problem of adjusting such losses often becomes a great difficulty, and is not always understood by the judges, who, no matter how learned they may be in the law, are often insufficiently familiar with the business of insurance and the science of mathematics to be able to master the situation properly.

Subrogation.

The doctrine of subrogation has such an important bearing upon the subject of fire insurance, that it becomes necessary to understand it clearly.

Subrogation is an equity or right called into existence for the purpose of enabling a party secondarily liable, but who has paid the debt, to reap the benefit of any securities or remedies which the creditors may hold as against the principal debtor, by means of which the party paying the debt may be recompensed. To illustrate, a surety who pays a debt which has been reduced to a judgment is entitled to have the judgment kept alive for his benefit and to enjoy, as against the principal debtor, the advantages which could have been claimed by the judgment creditor.

If an insurance company shall claim that the fire was caused by the act or neglect of any person or corporation, the company on payment of the loss shall be subrogated to the extent of such payment, to all right of recovery by the insured for the loss resulting therefrom, and such right shall be assigned to the com-

pany by the insured on receiving such payment. This right of subrogation is based upon the equitable principle that the negligent person who caused the loss and who is primarily liable, ought to be made ultimately responsible for the damages sustained. The insured, in the first instance, has his option between two forms of remedy. If he pursues his remedy against the wrongdoer and recovers compensation, the insurance company will escape. But if he chooses first to enforce his claim against the insurance company, the latter is entitled, by way of subrogation, to have recourse over against the guilty party for compensation.

Actions by and Against Insurance Companies.

Where two policies are issued by a company at the same time to the same party and on the same goods, and a loss falls within the terms of each, but greater than the amount of either policy, though less than the aggregate of both policies, the insured may recover a single judgment on both policies for his entire loss.

A clause in a policy of fire insurance limiting the time within which the insured may bring action thereon is not void as being against public policy, and the fact that the action was not brought within the time specified prevents recovery.

The ordinary fire insurance policy contains a clause to the effect that no suit or action on the policy for the recovery of any claim shall be sustained in any court of law or equity until after full compliance by the insured with all the requirements of the policy, nor unless commenced within one year next after the fire.

Compliance with a condition limiting the time within which suit must be brought may be waived by the company. Such a condition may be waived by a course of dealing on the part of the company by which it postpones, on various grounds, settlement of the claim beyond the period limited, or by representations and assurances that the insurance will be paid, whereby suit is postponed.

If the insured has failed to bring suit within the specified time after loss, a clear, distinct and unequivocal promise to pay, made after the expiration of the time limited, amounts to a new contract for a valuable consideration and is enforceable.

The usual fire insurance policy contains the following clause: "If with the consent of the company an interest under the policy shall exist in favor of a mortgagee, or of any person or corporation having an interest in the subject of insurance other than the interest of the insured, as described herein, the conditions hereinbefore contained shall apply in the manner expressed in such provisions and conditions of insurance relating to such interest as shall be written upon, attached or appended thereto." This is

called the "Mortgagee Clause." If the owner of property, after placing a policy of fire insurance thereon, should subsequently mortgage the same, he should have attached to the policy the following: "Attached to and forming a part of Policy No. —— of the ——— Fire Insurance Company.

"Loss or damage, if any, under the policy shall be payable to ————, as mortgagee, as interest may appear, and the insurance as to the interest of the mortgage only therein, shall not be invalidated:

"By any act or neglect of the mortgagor or owner of the within-described property;

"Nor by foreclosure or other proceedings or notice of sale relating to the property;

"Nor by any change in the title or ownership of the property, nor by the occupation of the premises for purposes more hazardous than are permitted by the policy. Provided, that in case the mortgagor or owner shall neglect to pay any premium due on the policy, the mortgagee shall, on demand, pay the same; and provided also, that the mortgagee shall notify the company of any change of ownership or occupancy or increase of hazard which shall come to the knowledge of said mortgagee, and, unless permitted by the policy, it shall be noted thereon and the mortgagee shall, on demand, pay the premium for such increased hazard for the term of the use thereof; otherwise the policy shall be null and void."

The company reserves the right to cancel the policy at any time, as provided by its terms, but in such case the policy shall continue in force for the benefit only of the mortgagee for ten days after notice to the mortgagee of such cancellation, and shall then cease, and the company shall have the right on like notice to cancel the agreement.

Whenever the company shall pay the mortgagee any sum for loss or damage under the policy, and shall claim that as to the mortgagor or owner, no liability existed, the company shall, to the extent of such payment, be subrogated to all the rights of the party to whom such payment shall be made, under all securities held as collateral to the mortgage debt, or may at its option pay to the mortgagee the whole principal due on the mortgage, and shall thereupon receive a full assignment and transfer of the mortgage and of all other securities.

Lost Policies.

It frequently occurs that the insured loses the policy of insurance covering his property. In such case, it is usually pro

vided by statute that the company must, upon proof of the loss or destruction of the policy, furnish a copy of the same, together with the transfers which have been approved and recorded on the books of the company. A copy of the original policy so furnished is as effectual for the security and indemnification of the person holding same as the original.

Marine Insurance.

Marine insurance is a contract to indemnify against losses connected with navigation, its principal feature being to insure risks to which a ship, cargo, freight, profits or other insurable interest in property may be exposed during a certain voyage or a fixed period of time. The evidence of a contract of marine insurance is the policy, and such a contract must have all the essentials of a contract for any other purpose. In every contract of marine insurance there are three implied warranties, relating to seaworthiness, deviation and the legality of the adventure.

Implied Warranties—Seaworthiness.

In every policy of marine insurance there is implied a warranty that the ship is seaworthy at the time the risk commences. Under this warranty it is not necessary that the vessel be seaworthy during the entire voyage, but merely when the risk attaches. By seaworthy we mean that the vessel is in a fit state as to repairs, equipment and crew to encounter the ordinary perils of the voyage which is insured. The cargo of the vessel must be properly stowed and its weight not in excess of the vessel's safe carrying capacity. Neither the ignorance nor the innocence of the insured will relieve him from the consequences of a breach of warranty as to seaworthiness.

Deviation.

The second implied warranty in every contract of marine insurance is that when the voyage contemplated by a policy is described by places of beginning and ending there will be no voluntary deviation from the course fixed by mercantile usage, and no unreasonable delay in the commencement or prosecution of the voyage. A deviation for the purpose of saving persons whose lives are in jeopardy will not be a breach of this warranty, which rule is established on principles of humanity, but a deviation will not be excused if made for the purpose of saving property.

Legality.

The third implied warranty in contracts of marine insurance is that the voyage shall be legal regarding both its nature and mode of conducting it. If the insured engages in smuggling or attempts to violate the revenue laws, or carries passengers when the vessel is not licensed to do so, his actions will render his policy void.

Express Warranties.

An express warranty in a policy of marine insurance is an agreement inserted in the policy which alleges the existence of certain facts or promises the performance of certain acts. An express warranty need not be inserted in the policy, but may be written on a separate paper referred to therein.

An express warranty to sail with convoy can only be complied with when the vessel sails with a legally appointed convoy for the entire voyage insured. If a policy contain an express warranty of neutrality, the vessel or cargo must be the property of a citizen of a neutral country, and, unless the vessel carries the proper documents to prove its neutrality, the express warranty will be broken and the policy become void. If the ownership of a vessel is warranted, and the same be in the name of another than the party mentioned in the policy, a breach of this warranty would result.

The same distinction between a warranty and a misrepresentation applies to contracts of marine insurance in the same manner as we have observed in connection with other contracts. A policy of marine insurance will be avoided in the case of a fraudulent misrepresentation, even if the loss arise from a cause wholly unconnected with such misrepresentation.

The insured must communicate every fact within his knowledge which would induce the insurer to refuse the risk or demand a higher premium.

Insurable Interest as Applied to Marine Insurance.

It is a well-established rule that any person, with the exception of an alien enemy, who is the owner of a vessel or has an insurable interest in the property, may have the same insured.

As in the case of fire insurance, so in marine insurance, a party has an insurable interest if the loss of the property insured would result in pecuniary damage to himself. It has been held that pecuniary damage may result not only to a person who has an unqualified property in the thing insured, but also to a person who has any reasonable expectation of legitimate profit or advan-

tage to spring therefrom. For example, a person who loans money on a supercargo or on the credit of a vessel has an insurable interest therein. Likewise a person who purchases goods which are delivered to a wharf or railroad station may insure their safe transit.

The owners of a vesssel and cargo who are engaged in a joint venture, stand in the relation of partners, each having a lien on the vessel and cargo for his own interest in the co-partnership. A part owner has an insurable interest in the joint venture, to the extent of his advances and disbursements made on account thereof. An insurable interest may spring from a prior insurance, as occurs when one company which has assumed a risk causes the property to be reinsured in another company.

Any property engaged in or connected with maritime trade may form the proper subject of marine insurance. Such property may include the wharves at which the vessels touch, the warehouses wherein goods are stored, vessels, cargo, freight, the profits of a voyage, the insurance premium, and the solvency of the insurance company. The word "freight" has a double meaning, sometimes implying the cargo, and sometimes the profits of the ship earned by carrying a cargo. An insurance on the body of a vessel includes whatever is appurtenant to the ship. Legal insurance cannot be placed upon an illegal cargo. A lawful cargo may, however, be insured, although purchased with the proceeds of an illegal voyage. The property insured must be described with sufficient accuracy as to identify it clearly.

The consideration of the contract of marine insurance is the premium which is payable before the risk attaches and may be paid in cash or by promissory note. If the vessel insured fails to sail or the cargo insured is not carried, no risk is incurred and the premium paid must be returned by the insurers. If, however, the risk attaches for a single instance, the premium need not be returned.

The risk in marine insurance is the contingency or event upon the happening of which the insurer's liability attaches. It is very important that the duration of the risk be distinctly set forth. If a ship has been insured and the policy reads from a specified port, the risk commences as soon as the vessel lifts anchor. Some marine policies read "at and from" a certain port, in which event the risk commences at the time the policy is issued, if the vessel at that time was at the port named. The risk on a vessel ends when the same is moored at the port of discharge, in such a manner that its cargo may be unloaded safely.

If a cargo is the subject of insurance, the risk will commence

when the cargo is loaded on the vessel and will terminate when the cargo is landed at the port of discharge. If a certain quantity of goods is insured for a specific voyage, part of the cargo cannot be sent on one voyage and the remainder on a second voyage. In such an event, the policy of insurance will only cover the goods sent on the first voyage.

A policy of marine insurance for a specified term, but with a condition annexed that if the vessel be at sea when the term expires, the risk is to continue until she arrives at her port of destination in the United States, will not cover a loss accruing after the limit of the policy, unless on that date the vessel is on her voyage to her port of destination in the United States.

Different Kinds of Marine Policies.

The amount which is recoverable in the event of loss is determined by the form of the policy. Marine policies are of two kinds (1) open, and (2) valued.

If an open policy, no definite amount is stated as the value of the insurance, but the insurer agrees to compensate the insured for such losses as he can prove he has in reality sustained. In an open policy, the owner of a vessel which has been lost or entirely destroyed, may recover the value of the vessel at the time the insurance was placed. The provisions, outfit and wages paid in advance, together with the premium of insurance, will all be considered in estimating the real value of the vessel. If a cargo is destroyed, the owner may recover the market value thereof at the time the vessel commenced the voyage. The amount recoverable on an open policy of marine insurance is limited to the value of the interest which the insured has in the vessel or cargo when the loss occurs.

In a valued policy, on the other hand, a stipulated sum is named as the value of the property insured, which will be paid upon the happening of the contingency insured against. Upon the total loss of the property insured under a valued policy, the insured may recover the full amount named therein, regardless of the actual value of the interest. An actual total loss occurs when the subject insured wholly perishes or its recovery is rendered hopeless. If a ship is so injured by the perils of the sea as to be incapable of repair, the loss is total, though her materials survive either in fragments or bound together in the original form. Likewise if goods are so badly damaged as to become incapable of use for the purpose intended, there is an actual total loss. When a partial loss occurs, the better rule seems to be that the valuation contained in the policy will be used as a basis to

determine the actual loss for which compensation will alone be given. In a valued policy the amount named should represent the real value of the ship or cargo, together with incidental expenses.

Profits and freight are frequently made the subject of valued policies of insurance.

A contract of marine insurance is not complete and effective until the parties have agreed upon the duration of the risk, the perils insured against, the amount to be paid in event of loss, and the rate of the premium.

Perils Covered.

In marine insurance, the insurer is only liable for extraordinary risks. The warranty of seaworthiness, as was heretofore observed, is an assurance that the vessel is competent to encounter all ordinary perils with safety.

By "perils of the sea," which are insured against, is meant those perils incident to navigation from the elements, the ocean, its rocks and shores. The policy only covers the marine casualties which result from the violent action of the elements, and not those resulting from their natural influence upon the vessel or cargo. Running aground in a storm, injuries to animals or cargo by being tossed about or becoming wet, or collison with another vessel in a fog, are all perils of the sea against which a policy of marine insurance is a protection.

If a vessel is unheard of for a long time after its arrival is due the law presumes that the vessel was lost by an extraordinary peril of the sea, in which event the insurer will be liable.

Any loss of property occasioned by fire may be insured against in a marine insurance policy. Fire must result from some extraordinary cause and not the inherent quality of the property taking fire in order to hold the company liable. For example, an insurance company would not be liable on a marine policy if the cargo insured consisted of hemp in a state of effervescence, which generated fire and consumed it. The insurer is liable for goods damaged by throwing water thereon to extinguish fire and for any other loss or injury which is the natural and proximate effect of the fire.

The insurance company is also liable for losses resulting from piracy or theft.

It is no defense to an action on a marine insurance policy that a loss caused directly by a peril of the sea happened through the negligence of the captain or crew. In such case it is sufficient to aver a loss by the perils of the sea, which were insured

against, and which directly caused the loss. A leak in a vessel, occasioned by the gnawing of rats, without the neglect of the captain, is a peril of the sea within the meaning of a policy of marine insurance.

Barratry.

Barratry is any illegal act committed by the master or mariner, in his capacity as such, to the prejudice of the owner of the vessel, and has two essential elements. It can only be committed against the owner of the ship, and consequently if the master of the vessel is the sole owner he cannot commit barratry against other parties in interest as shippers of goods.

A captain, however, who is a part owner of a ship, may be guilty of barratry, as against the other part owners. If the captain of a vessel is guilty of a fraudulent act, for his own benefit, and the owner of the vessel is ignorant of the act, and neither authorized it nor consented to it, it is a case of barratry within the indemnity of a policy of marine insurance. Though a policy of marine insurance will protect against loss through mere negligence and carelessness, yet it will not protect against the misconduct of the party insured, and if a loss results therefrom the owner of the property must bear it.

The second necessary element of barratry is that the loss resulting therefrom must happen during the continuance of the voyage and not after the vessel has been safely moored at the port of destination.

Losses not Protected.

A policy of marine insurance does not protect against the usual perils to which every vessel is exposed, but only against such as are extraordinary, as heretofore stated. The insurer is therefore not liable for losses due to ordinary wear and tear or natural decay, nor for losses due to the inherent weakness of the thing lost, as, for example, the loss of rotten rigging or the loss of a cargo caused by spontaneous combustion. Where the cargo consists of perishable goods, the insurer usually limits his liability by stipulating in the policy, by way of memorandum, that it will not be liable on same for the whole loss. The purpose of introducing such a condition into the policy is to guard against liability for losses not arising from maritime perils, but which are due to the perishable nature of the goods.

Most policies of marine insurance contain a proviso that the company shall only be liable in the event of loss for such part of the property destroyed as is not covered by a prior insurance. In

this event a subsequent policy will not take effect until the prior policy is exhausted, and if the prior policy is sufficient, the subsequent policy will be suspended. If the insured has taken out several policies of the same date, each will be responsible for the entire risk, and it is optional with the insured as to which policy he will bring suit on. Under the equitable doctrine of contribution, the company held liable may compel the other companies who were equally liable to contribute their proportionate shares.

General Average.

A general average loss has been defined to be "a loss arising out of extraordinary sacrifices made, or extraordinary expenses incurred for the preservation of a ship or cargo." The plainest principles of equity dictate that the sacrifices so submitted to should be made good and the expenses incurred repaid, by a general contribution from all those benefited by either the one or the other, in proportion to the value of the property which those sacrifices and expenses have been instrumental in saving. In other words, if several parties are interested in a particular voyage, and it becomes necessary to throw overboard part of the cargo, the amount of the loss is ascertained directly after the ship's arrival at her port of destination and is there assessed upon each of the co-adventurers, who in law are liable to the party who has suffered by the loss. If it is necessary to sacrifice property to save the ship or cargo, the owner thereof, if insured, is reimbursed his loss by his underwriters. The latter, by virtue of the doctrine of subrogation, are entitled to claim against the owners of the interests saved, who, if insured, are in their turn entitled to claim from their underwriters the same proportion of the sum insured in the policy as the amount assessed upon them by way of contribution bears to the whole value of their property saved by the sacrifice. Consequently, when a ship and cargo are insured, general average losses, when their amount is once ascertained, are settled by the underwriters. The means adopted whereby the amount of damages is acertained, the different parties in interest assessed, and those suffering losses reimbursed, is called the adjustment of general average.

The leading characteristic of a general average loss is that it is the intentional result of the act of man, *i. e.*, it arises from damage purposely submitted to or directly effected by the agency and will of man, and not accidentally caused by the agency of the winds and waves. To entitle the party sustaining such loss to a general average contribution it must appear to have been incurred with a view to the general safety of the ship, cargo and freight.

The general safety must also be the motive for the sacrifice, and if made with any other object in view it can give no claim to a general average contribution. For example, no recovery could be had where the captain of a ship on the point of capture threw money overboard, not to save the ship and cargo, but merely to prevent the money from falling into the enemy's hands.

To constitute a general average loss it is further necessary that it should have been incurred under the pressure of a real and imminent danger. The sacrifices may have been made in good faith for the general safety, but unless that safety shall appear to have been really endangered a claim for contribution cannot be sustained.

Voluntary Stranding.

In the United States the voluntary stranding of a ship when in peril is held to be a general average act, regardless of whether the vessel becomes ultimately a total wreck or not. General average is not, however, allowed in favor of a ship owner if the voluntary stranding was made necessary by the negligent navigation of the ship.

A frequent cause of general average expenses occurs where a vessel in peril puts into a port of refuge for repairs to enable her to continue the voyage. Wages and provisions of the crew are allowed, in general average, from the time of deviating from the voyage for the purpose of putting into a port of refuge until the voyage is resumed, or until the cargo and vessel are separated, or until there is no longer any prospect of continuing the voyage.

The rules of practice for the adjustment of general average losses vary greatly in different countries and in different ports. It has been held that an adjustment made at the end of the voyage, if valid there, is valid anywhere, and the first port reached subsequent to the general average act, where any or all the interests are separated, may be the end of the voyage for this purpose.

Total Losses.

A total loss, in the law of marine insurance, is one on account of which the assured is entitled to recover from the underwriter the whole amount of his subscription. Total losses are either absolute or constructive. An absolute total loss is one which entitles the insured to claim the entire insurance from the underwriter without the necessity of giving notice of abandonment. On the other hand, a constructive total loss is one which entitles the insured to make such claim on condition of giving such notice

of abandonment. An absolute total loss results when the subject of the insurance wholly perishes or its recovery is rendered hopeless, whereas a constructive total loss takes place when the subject of insurance is not wholly destroyed, but its destruction is rendered highly probable and its recovery in part doubtful. The difference, therefore, between an absolute and a constructive total loss is that in the former case the loss of the thing insured to the owner thereof is ascertained and permanent, while in the latter case it is inferential and temporary. For example, where a vessel founders in deep water, so as to leave no reasonable hope of recovery, the loss is absolute. If, however, the vessel sinks in shallow water, so as to admit of a reasonable hope of raising and restoring her only at a cost exceeding her value when raised or restored, the loss is constructive. Likewise where a cargo is so damaged by sea perils that the goods cannot be brought to their destination in specie, the loss is absolute; but if, though damaged it is possible to bring them to their destination in specie only at a cost exceeding their value when so brought the loss is constructive.

Notice of abandonment by the insured to the underwriters is a condition precedent to the right to recover for a constructive total loss. The exception where notice of abandonment is unnecessary occurs where, at the time the insured elects to treat the claim as one of constructive total loss, there is no possibility of the underwriter deriving any advantage from such notice, either because there is nothing to abandon or because the disposal of the property was determined before the opportunity to give notice occurred.

It is necessary to make an abandonment within a reasonable time after information of the loss and after the commencement of the voyage and before the party abandoning has information of its completion. The insured should, on deciding to claim for an absolute loss, give notice of his intention promptly to the underwriters in order that the latter may be given the opportunity to take any steps which they may think proper for the recovery of the property or for the realization of salvage if the property is recoverable. No specific form of notice of abandonment is required, it not even being essential that such notice be in writing, though it is both customary and advisable that written notice be given.

The effect of an acceptance by the underwriters of an abandonment is equivalent to a transfer of the insured's interest to the insurer, with all chances of recovery and indemnity.

Where profits are valued and insured by a contract of marine insurance, a loss of the profits is presumed from a loss of the

property out of which they were expected to arise, and the valuation of the property fixes their amount.

The method of ascertaining a loss under an open policy of marine insurance is as follows: (1) The value of a ship is its value at the beginning of the risk, including all articles or charges which add to its permanent value or which are necessary to prepare it for the voyage insured. (2) The value of the cargo is its actual cost to the insured when laden on board; or, where the cost cannot be ascertained, its market value at the time and place of lading, adding the charges incurred in purchasing and placing it on board, but without reference to any losses incurred in raising money for its purchase, or to any drawback on its exportation, or to the fluctuations of the market at the port of destination, or to expenses incurred on the way or on arrival. (3) The value of freight is the gross freight, exclusive of primage, without reference to the cost of earning it. And in each case the cost of insurance is to be added to the value then estimated.

Particular Average.

A particular average on goods consists either in a deterioration or total loss of part of the subject insured by the operation of the perils insured against. It is important to distinguish between a particular average and a salvage loss on goods, as some confusion has occurred in the use of these terms.

"A salvage loss is a total loss diminished by salvage, and takes place in relation to goods, where there is either an absolute or a constructive total loss of the subject insured, but some remains of the property have been recovered by the assured. In that case the claim upon the underwriters is for the difference between the insured value and the net proceeds, and the latter are computed by deducting from the gross proceeds of the property saved all charges incurred in realizing the salvage.

Where only a part of the subject insured is sold short of its destination, the remainder being delivered there, the claim, though stated in practice as a salvage loss, is in principle one for particular average.

Conclusion.

The details of the adjustments of marine losses between the insurers and the insured are frequently a matter of great complication and are generally placed in the hands of professional experts called average adjusters. The adjustment reached by such experts is usually by special agreement, made the basis of an amicable settlement among the different interests, and lawsuits

are not as common over marine adjustments as in other branches of insurance.

When the partially-damaged ship and cargo arrive, the master or owner advertises for bids for repairs. Bids are accepted, the survey of damage is made and contracts for rebuilding executed. These, with the bills of lading or invoices, the freight manifest, the charter party, the policies of insurance and any other proofs of loss, furnish the adjuster with the necessary material for making up his accounts, apportioning the loss according to the respective rights of the different interests.

As soon as a loss has been adjusted and paid the policy of insurance becomes merged in such adjustment, and thereafter the insurers cannot avail themselves of any defense, which they might have done under the policy as a ground for opening the adjustment. Of course, if there has been any fraud practiced in obtaining the adjustment, redress may be had.

As the subject of marine insurance is a very technical one, it has been thought best, in a book of this character, to treat the same briefly and merely outline its most important features.

COMMON CARRIERS

Definition — Classification — Liability — Connecting Carriers — Stoppage in Transit—Lien for Charges—Interstate Transportation—Railroad Rate Bill—Baggage.

THE public interest in questions concerning the rights, duties and liabilities of common carriers in their relation to shippers and travelers, and their governmental regulation as public service corporations, renders this subject one of timely and practical importance.

A carrier has been judicially defined as a person or corporation who undertakes to transport or convey goods, property or persons from one place to another, gratuitously or for hire. There are two classes of carriers, private or special, and common or public. The classification of carriers is important because it enters largely into the determination of the legal responsibility of the carrier. The class among carriers to which a particular carrier is to be assigned depends upon the nature of his business, the character in which he holds himself out to the public, the terms of his contract and his relations generally to the parties with whom he deals and the public. The above classification includes carriers by land and by water, as well as carriers of goods, carriers of passengers and carriers of live stock.

The carriage by one of the goods or baggage of another is what is known in law as a bailment, and when it is done without compensation to the carrier belongs to that class of bailments known as mandates. When the carrier is paid for carrying goods or baggage, such carriage of goods is of that class of bailments known as hiring. Private carriers, whether for or without hire, are merely bailees, with the duties and liabilities of such. The foundation of their liability is negligence. The liability of a common carrier is based upon reasons of public policy and not upon the contract of bailment. The common carrier of goods is practically the insurer of the safety of the goods. The liability of a common carrier of passengers for an injury to a passenger generally depends exclusively upon the question of negligence, but the common carrier of goods is held to be an insurer against all accidents not attributable to the acts of God or of the public enemy.

A private carrier is one who agrees to transport persons or

property from one place to another in a particular instance only; in other words, one who does not make such services a regular vocation. A common carrier, on the other hand, holds itself out to the public as willing to carry any person or property indiscriminately. A private carrier for hire is one who, without being engaged in such business as a public employment, undertakes to carry and deliver the goods of others upon particular occasions for hire or reward, upon such terms as may be agreed upon. All persons who carry under a special contract, as the driver of a stage-coach, occasionally taking packages to carry for compensation, are private carriers. Likewise one who contracts to cut timber and transport it to the place where it is to be delivered and used does not incur the responsibility of a common carrier, but is only liable as a private carrier for the want of ordinary prudence, care and skill. A common carrier may by special contract limit its common-law liability and thus become a private carrier for hire as to the particular goods carried under the contract, although it cannot by special contract create an exemption from liability for actual negligence of itself or its servants.

There are five essential particulars in which a common carrier differs from a private carrier. In the first place a common carrier is liable for all loss or damage of property carried by it except where the loss results from inevitable accident or the act of God, whereas a private carrier is only liable for bad faith or ordinary negligence. In the second place a common carrier cannot stipulate against liability for negligence, whereas a private carrier may. The third distinction resides in the fact that a common carrier has a lien on the goods carried for its charges, *i. e.*, a common carrier may retain possession of the goods until the charges have been paid or sell same if necessary to cover costs of carrying, while a private carrier has no such privilege. Furthermore, a common carrier may be sued for an unreasonable refusal to carry goods offered by the public, but a private carrier may haul such goods for such persons as he prefers without any liability to carry goods offered to him. The fifth difference between a common and a private carrier is the fact that a common carrier is required to receive a compensation for services rendered, whereas it is optional with a private carrier whether or not to receive compensation.

The nature and extent of employment and business in which a common carrier holds forth to the public as engaged, furnish the limits of the rights, obligations, duties and liabilities of such common carrier. A common carrier may be a carrier of either passengers or freight, or both. A common carrier, being one who

transports goods for hire for the public generally, acquires such a special property in the goods delivered as to give it a right of action against any person who deprives it of possession, or who injures the goods. By reason of the public nature of the employment, the responsibility imposed upon a common carrier by law is that of an insurer against loss or injury of the property while in its custody or under its control, or until delivery to the consignee or owner. A common carrier is not liable where the loss or injury resulted from the inherent nature of the goods, nor where the loss or injury was due to the negligence of the shipper, nor where the loss or injury resulted from delay in the transmission of the goods, nor where the loss or injury was caused by the exercise of public authority.

A common carrier is not liable for refusing to carry goods if not possessing facilities for doing so.

Classification of Common Carriers.

An express company which undertakes to carry goods for hire for the public generally is a common carrier. Local express companies which carry baggage to and from the depots of the various railroads are common carriers and perform their duties under the responsibility of such.

Railroad companies which are chartered by the state to carry goods and passengers for hire are the principal class of common carriers. Railroad companies in their capacity of common carriers of passengers incur the responsibility of a common carrier in regard to the baggage of passengers. Street railway companies, as common carriers of passengers for hire, having similar rights and liabilities as railroad companies, are required to exercise the highest degree of care, skill and diligence for the safety of their patrons, and are liable for the slightest negligence causing injury or damage to the passengers. A transportation company which does not own or control any means of conveyance itself, but engages in the business of transporting goods through the agency and over the lines of another carrier of its own selection, is a common carrier subject to all responsibilities connected therewith. Such a company cannot by agreement obtain exemption from liability for damages to goods caused by the negligence of its agents or sub-carriers.

Owners of canal boats are common carriers if they hold themselves out as willing to transport merchandise for any one applying to them. The courts have held that the owner of a tugboat engaged in towing vessels is not a common carrier, and hence not liable as an insurer. Strictly speaking, the owner of a

tugboat is not a bailee, for the property towed is not delivered to him nor placed within his exclusive control. It has been held, however, that the owner of a tugboat incurred the responsibility of an ordinary bailee for hire. A ferryman who transports passengers with their teams, vehicles or other property, but who carry such property, only with the owner or custodian thereof, is not under the obligation of a common carrier. If ferrymen combine with the ferry business the business of carrying merchandise without the presence of the owner, they become common carriers, and hence must exercise extraordinary care in transportation.

The authorities are unsettled as to whether or not hackmen, who transport passengers for hire, are common carriers. Having no special route or scheduled time for making trips, the weight of authority is to the effect that a hackman is not under the obligation of a common carrier.

Taxicab and auto-bus transportation companies are now classified as common carriers, as are omnibus companies engaged in carrying passengers and baggage between the hotels and depots of a city. Nothing will excuse omnibus proprietors for the loss or injury to baggage except inevitable accident. They would not, however, be liable for the loss of a large sum of money contained in a trunk in excess of an amount ordinarily carried by a traveler.

Palace and sleeping car companies are not liable as common carriers, the company only being bound to exercise reasonable care in looking after the person and property of passengers. Such companies have been held liable for the theft of a pocketbook or jewelry from a passenger, providing they have been negligent in not taking proper precautions against such theft. It has been held that a sleeping car company is not liable for sickness contracted by an occupant of an upper berth from water dripping from an open ventilating window in the night, where such occupant failed to request an attendant to close it, or where he was in a position to close it himself and did not. The company is liable in damages for breach of contract to reserve a berth for a passenger or to furnish him with a berth in accordance with a ticket paid for by him.

Truckmen, draymen and common porters transporting goods from one point to another for hire are common carriers. Steamboat companies carrying passengers and freight are common carriers, but ocean steamship companies are not responsible as a common carrier for the baggage of a passenger kept by him in his own stateroom. A canal company, which, for the payment of a certain toll, allows boatmen to navigate the canal, is not a common carrier, but is bound to see that the canal may be navi-

gated without danger. Warehousemen and wharfingers, who merely receive and store merchandise, or ship same to their destination for hire, are not common carriers, but are only liable for loss arising from the negligence of themselves or agents.

Postmasters and mail carriers are not liable as common carriers for the safety of such property as may be sent through the mails, or for the embezzlement of clerks or deputies employed by them. The postal service, including the money-order system, is a department of the United States government, in charge of public officers or agents, who enter into no contracts with individuals and receive no hire from them. Such officers are liable to the government for the proper discharge of the duties imposed upon them by law. A postmaster is liable to individuals for money or property stolen or lost from his office through his negligence, or any wrongful act.

Telegraph companies are in many respects judicially regarded as common carriers. The transmission of messages is necessarily subject to the risk of mistake and interruption. A telegraph company has not the actual immediate custody of the messages as the common carrier has of the merchandise it carries, and should, therefore, not be under the same obligations as a common carrier. On the other hand, it is argued that there is no difference, in the general nature of the legal obligation of the contract, between carrying a message along a wire and carrying a package along a certain route. In view of the deep interest which the public has in this line of business, and the necessity for the prompt and accurate transmission of messages, the weight of authority has held that a telegraph company is a common carrier. In so holding the courts have allowed telegraph companies to provide against such risks as arise out of atmospheric influences and kindred causes.

Telephone companies, however, are not common carriers, as they do not transmit messages, but merely furnish subscribers with the means of transmitting their own messages. The law requires telephone, the same as telegraph companies, to furnish equal facilities to all. A telephone company may be compelled by mandamus to furnish service to any one offering to comply with its regulations.

Elevators in Office Buildings.

There is no distinction, so far as legal liability is concerned, between vertical transportation and horizontal transportation. The owner of an office building operating elevators therein receives no compensation for carrying passengers (other than the indirect

compensation in the nature of rental paid by the tenants), and on this account does not come within the definition of a common carrier. The better authority is to the effect that, although the operator of an elevator is not technically a common carrier, nevertheless for reasons of public policy he is held to a similar liability.

Telegraph messenger companies engaging in the business of delivering parcels by its messengers are liable for any loss suffered from the messenger's failure to obey instructions, or the negligence of such messenger, such a company being regarded as a common carrier.

The owners of grain elevators occupy a relation to the public similar to common carriers. They must receive and store grain for lawful prices for any one applying to them. They may be controlled by public legislation for the common good, and a maximum rate of charge may be established by law.

The duty is imposed by law upon every common carrier to receive and carry all goods offered to it for transportation, within the line of its business, upon being paid a reasonable compensation. Damages may be recovered against a railroad company refusing to carry goods through ill-will or disregard of the rights of the shipper.

A common carrier is prohibited by law from discriminating between parties who offer goods for transportation. A common carrier may, however, charge lower rates for larger contracts, but will be liable in damages for discriminating between individuals on account of personality or on account of the particular class of goods offered for carriage.

A railroad company, as well as other classes of common carriers, owe a duty to the public not to charge exorbitant prices. A breach of this duty will warrant the law's interference, the state having the power to regulate the rates which a common carrier may charge. This right of regulation was exercised by the Legislature of Pennsylvania by the enactment of the two-cent rate bill, which was declared invalid by the supreme court. The right of the legislature to regulate rates was not questioned, the law being declared invalid on the ground that it was confiscatory as applied to the Pennsylvania Railroad Company. To-day the Interstate Commerce Commission fixes the rates for both passengers and freight for all common carriers doing an interstate business.

A common carrier of goods is not under obligation to accept and carry all personal property that may be offered to it, although as a general rule this obligation holds good. Its duty, strictly speaking, is limited to carrying property of such kinds, to and from such places, as it publicly professes and undertakes, or is accustomed to carry and has facilities for carrying. It may make

reasonable rules and regulations for the reception, carriage and delivery of freight, including the classification and suitable preparation of articles for shipment. A common carrier may also require prepayment of freight charges from any shipper, although this is seldom done.

Commencement of Liability.

As a general rule the responsibility of a common carrier for goods transmitted to it shall commence when there has been a complete delivery to it for the purpose of immediate transportation. Where goods are delivered to a common carrier to await further orders from the shipper before shipment, the common carrier, while they are in his custody, is only liable as a warehouseman. A complete delivery does not merely include a handing over of the goods, but also their acceptance by the common carrier, so as to place the exclusive duty of seeing to their safety upon the common carrier. A railroad company is liable for the loss of goods by fire, which were placed by it on a wharf with notice to a steamboat company to remove them, and the bill of lading provided that the loss should fall upon the carrier alone which had actual custody at the time the loss occurred. Permitting the shipper to put his cattle in the station yard, no bill of lading being given by the station agent, does not constitute such delivery as to render the company liable for cattle escaping.

A special place for receiving freight may be fixed by custom, and delivery to such place is sufficient to charge the carrier with liability. Actual notice of the deposit of goods for shipment at such places must be given to the common carrier, unless there is an agreement or usage whereby goods deposited at a certain place are to be taken charge of by the carrier without special notice of such deposit. It is not necessary for the carrier to give the shipper a bill of lading to constitute a complete delivery, although this is frequently done.

Termination of Liability.

The extraordinary liability of a common carrier ends when the goods are delivered to the consignee. It is very important to determine just when and under what circumstances the goods are delivered to the consignee.

The carrier's liability cannot end until that of the owner, consignee or warehouseman begins. The liability of the common carrier terminates when its liability as warehouseman begins. As soon as the goods are safely conveyed to the point of destination, and the carrier cannot deliver the goods on account of the death,

absence or refusal of the consignee to accept them, the carrier is discharged from further responsibility by storing the goods in its freight depot. If the goods arrive safely at the termination of the journey, and notice is sent to the consignee that the goods are there subject to his order, the liability of the carrier is at an end. Payment of the freight charges by the consignee after notice of arrival of the goods amounts to a delivery, and throws the risk of loss upon the consignee.

Connecting Carriers.

The courts are very rigorous in the enforcement of the law which requires the common carrier to make delivery of the goods transported to the proper person and will accept no excuse by a common carrier for a wrong delivery except same result from fault of the shipper. A delivery to the consignee's agent or to a third party under instructions from such agent has been held to be a good delivery. It has also been held that delivery of a wife's goods to a husband is good, the presumption being that the husband is the duly authorized agent of the wife. Similarly, delivery of a money package addressed to the cashier of a bank has been held good if delivered to the receiving teller.

There are four different ways in which delivery to the consignee may be made. First, by personal delivery by the carrier to the consignee, which is required in all cases where the goods are carried in wagons. For example, express companies are under legal obligation to make personal delivery. Second, common carriers by water are only required to notify the consignee of the arrival of the goods and afford the consignee a reasonable opportunity for removal, personal delivery not being required of this class of carriers. Third, railroads are not required to make personal delivery or notify the consignee. However, as their liability as warehousemen begins when the goods have reached their destination, the custom has been adopted of notifying the consignee. Fourth, the liability of a common carrier of baggage does not end until the owner has been given a reasonable opportunity to remove the same, after it has been unloaded and placed in a position by the carrier for delivery.

Let us next consider such excuses as will exempt a common carrier from liability on account of non-delivery of the goods to the consignee.

If in the course of transportation or before final delivery, the common carrier ascertains that some one other than the consignor is the real owner of the goods, and such true owner demands them, the common carrier is discharged from further

liability upon delivery of the goods to the real owner. In other words, the common carrier may justify failure to deliver to the consignee by proof of demand and delivery to one having a paramount title.

"Stoppage in Transitu."

If a consignor has not received payment for the goods shipped, and ascertains that the consignee has become insolvent, he has a right to reclaim the goods in the custody of the common carrier at any time before they have arrived at their destination. When the consignor has exercised this right and possession of the goods is given him, the common carrier is excused for failure to deliver the goods to the consignee. It may be stated as a general rule that where a common carrier receives goods for transportation and delivery to the consignee, the consignor (shipper) parts with the goods and all control over them. Delivery to the carrier is delivery to the consignee's agent, and the consignor cannot thereafter prevent their delivery to the consignee unless upon such facts as will justify the exercise of the right of stoppage in *transitu*. If the goods have reached their ultimate destination, before the consignor makes claim to the common carrier therefor, title passes absolutely to the consignee and the right of stoppage in *transitu* is lost. To justify the exercise of this right, it must appear that the consignee has become insolvent and that the consignor would in all probability be unable to collect the price of his shipment.

If delivery of the goods by the consignor to the common carrier is qualified or conditional, that is to say, if the shipper notifies the common carrier not to deliver the goods to the consignees until he presents the bill of lading and a draft upon him, delivery to the carrier is not delivery to the consignee, who, unless he complies with the conditions, acquires no title or right to the property. The consignor has the privilege under such circumstances to change the consignee while the goods are in transit, and has also the right to change their destination after the goods have passed into the hands of a connecting carrier by taking a new bill of lading.

The third excuse for the non-delivery of goods to the consignee by the common carrier is proof of their loss or injury by an act of God, by act of the public enemy, by the inherent nature of the goods, by act of the shipper or his agent, and by public authority. Certain of these conditions will be discussed later on.

Bills of Lading.

A bill of lading is a receipt for the goods carried, given by the common carrier, and when properly indorsed and delivered operates as a transfer and delivery of the property itself, and the consignor loses the control of the goods by such transfer. A common carrier is not liable for delivery otherwise than in accordance with the bill of lading, or to any one not authorized to receive the goods, even though he be the consignee.

Any bill of lading which shall have the words "not negotiable" plainly written or stamped on the face thereof shall not be negotiable.

If goods are delivered to a common carrier it will not operate as a delivery to the consignee, where by taking the bill of lading to his own order the shipper reserves to himself the power of disposing of the property. It has been held that if a bill of lading is fraudulently issued, a bank cashing a draft with the bill of lading attached acquires a good title to the property in question. A bill of lading, although negotiable in the sense that it may be transferred by indorsement and delivery, is not negotiable in the sense that a bill of exchange or promissory note is negotiable. In the case of a bill of lading the transferee only takes such rights as the transferor had, whereas an innocent purchaser for value of an ordinary negotiable instrument acquires an absolute and indefeasible title thereto.

If the common carrier has delivered the goods to a wrong party, it is no excuse that the indorsee of the bill of lading was unknown to the carrier, and notice of the arrival of the goods could not be given.

It is the duty of the common carrier to demand production of the bill of lading by the consignee before delivering possession of the goods, for the carrier will be liable to the holder of the bill of lading if it delivers the goods to the consignee after he has assigned the bill of lading.

The transfer of a bill of lading before the right of stoppage in *transitu* is exercised will defeat the right, the assignment of the bill of lading transferring the title to the property. This rule is based upon the well-established doctrine of law that whenever one of two innocent parties must suffer by the act of a third, he who has enabled the third person to do or occasion the injury must suffer the loss.

If the goods carried are consigned by the shipper to the purchaser upon payment of a draft attached to the bill of lading for the purchase price of the goods, no title to the goods will pass to the purchaser, and the purchaser will not be entitled to a deliv-

ery of the property until the draft accompanying the bill of lading has been accepted and paid.

If bills of lading have been issued in sets, providing that when delivery has been made on one the others are to be void, a delivery by a common carrier upon presentation of a duplicate bill properly indorsed discharges the common carrier from any further liability.

Originally bills of lading were transferable by delivery only, but today, unless a bill of lading directs delivery of the goods to the holder, the common carrier would be responsible if it delivered the goods to any one but the original holder of the bill of lading, unless the same was properly indorsed. Delivery of goods to a third person by a common carrier on an unindorsed bill of lading is always at the risk of the carrier.

Delivery "C. O. D."

When a common carrier accepts goods marked "C. O. D." it undertakes not to deliver them unless the condition of payment is complied with. When a bill of lading requires the carrier to collect charges upon the goods on delivery, if the carrier delivers the goods without collecting the sum due, the carrier becomes liable for the debt. If the common carrier accepts the consignee's check, payable to the order of the consignor, for the amount to be collected, which is accepted by the consignor, the common carrier is relieved from all further responsibility, even though the drawer had no funds in bank when the check was drawn. If a common carrier has delivered a package marked "C. O. D." to the consignee, and received payment, and the transaction was fraudulent and the package worthless, the consignee may reclaim his money at any time before the common carrier has paid the money to the consignor guilty of the fraud. A consignee has the right to inspect a package or any goods prior to paying collection charges.

It sometimes happens that goods in the possession of a common carrier become mixed or confused. The consignee is entitled to the delivery of the identical goods shipped to him, and if the confusion of goods arises through mistake the common carrier is liable for damage.

Common Carrier's Liability for Damages.

We have heretofore mentioned the fact that common carriers are liable for loss or damage to goods or property carried by them in two capacities—(1) as insurers, and (2) as bailees for

hire. To exempt itself for loss of goods received for transportation the common carrier must show that the loss resulted from what is known as an "act of God," such as an unusual snowstorm or an extraordinary flood. A loss or injury is not attributable to an act of God where it is caused by a landslide caused by a rain of not extraordinary violence or the falling of a sign in an ordinary windstorm. Damage caused by an earthquake is a good illustration of the exception which will relieve a common carrier from liability. It has been held that to render a common carrier liable for damages for the destruction of goods by freezing while in transit, under a bill of lading exempting it from damages for freezing, it must not only be guilty of unreasonably delaying transportation, but the goods must have been frozen during the delay. It will be observed, therefore, that an act of God causing injury must be such an act as could not be foreseen or guarded against by human foresight or prudence. Such an act of God, in order to exempt a common carrier from responsibility, must be the immediate and proximate cause of the loss.

Loss or injury caused by the act of a public enemy will not render a common carrier liable. Thieves, rioters or irresistible mobs have been held not to be public enemies, but a pirate is regarded as such.

A common carrier is not liable for non-delivery of goods taken out of its possession under a valid legal process, but the common carrier must promptly give notice to the owner of such legal seizure.

A creditor of the shipper may attach property in the depot or yard of the common carrier or goods in actual transit at the time of garnishment. A common carrier cannot be held as garnishee for property which is beyond the territorial limits of the jurisdiction of the court issuing the process. A common carrier would be liable, however, for the value of fish shipped over its line which were seized by a game warden on the ground that the fish were illegally caught, where such a warden had neither legal nor apparent legal right to seize the same. To excuse the common carrier it must show that the property was seized under valid legal process.

The law imposes a duty on every common carrier of goods to adopt all reasonable means of lessening the damage to goods which have become injured while in transit. Thus, if packages of fur become wet, the common carrier must open them and let them dry. Where, however, an express company is not advised that a package given it for transportation contained gold it is not liable for not searching the ruins of a fire to recover the property.

A common carrier is not liable for losses resulting from the inherent nature of the goods. "Inherent nature of goods" has been held to mean that the loss occurs as a result of a vice, defect or infirmity in the goods, as, for example, where fruit decays or liquids evaporate. A common carrier has been held not to be liable for loss due to the bursting of a hogshead of molasses by reason of fermentation, which results from the operation of natural laws against which a common carrier does not insure.

Liability as Bailee.

We have heretofore discussed the common carrier's liability as an insurer. We will next inquire under what circumstances a common carrier is liable as a bailee.

If goods are delivered to a common carrier with instructions to await further orders from the shipper before transporting same, the common carrier is only responsible as a warehouseman, while the goods are thus in its custody. As such, the common carrier is not an insurer of the safety of the goods, but is only liable in case of gross negligence. In other words, as a warehouseman, a common carrier is only bound to exercise the ordinary care and prudence which is required of a bailee of any property for hire.

Where goods have been transported to their proper destination, and the consignee notified of their arrival, the liability of a common carrier as an insurer ceases and its liability as a bailee of the goods commences. In such cases the carrier is responsible for the manner in which it keeps the goods, but it is not responsible absolutely for their safe delivery.

Where goods pass over several connecting lines the rule that the liability of the common carrier ends when it has deposited the goods in a warehouse at the connecting point does not apply. The liability of each carrier in such case continues as an insurer until it parts with the possession and control of the goods by delivering them to the succeeding carrier. If the connecting carrier refuses to receive the goods within a reasonable time the carrier must immediately notify the consignee.

When the goods have arrived at their destination it is the duty of the common carrier, as bailee thereof (warehouseman), to store them safely, and it is responsible for the ordinary care and attention of its servants and agents in caring for them, so that they may be delivered whenever called for. The stipulation in the bill of lading that property not removed by the party entitled to receive it within twenty-four hours after its arrival at destination shall be at the sole risk of the owner, does not

relieve the company from liability for the loss of the goods, owing to its failure to exercise the care required of a warehouseman.

A common carrier would be liable as a bailee for failure to provide suitable places for feeding and watering live animals carried by it. Unless by special contract a common carrier agrees to transport and deliver goods within a prescribed time, it is not liable for delay in delivering the goods, unless such delay be beyond a reasonable time. Low water in a canal, or the freezing of a river might have caused delay, for which the carrier would not be responsible.

Contracts Limiting Liability.

It may be laid down as a settled rule of law that a common carrier may by contract limit its liability in the event of loss, to that of an ordinary bailee for hire, but a common carrier cannot by contract release itself from liability for negligence. These contracts limiting liability usually provide that the common carrier shall not be responsible, beyond a certain sum named, unless the value of the goods be declared beforehand; or that the common carrier shall not be liable at all unless a claim is presented within a certain time, or in a certain manner. As such contracts affect the interest of the public in general, let us consider how they are construed by the courts.

It can readily be seen that the public would be at the mercy of common carriers, if they could by special contract free themselves from their common-law liability. Hence the courts forbid common carriers from making a particular class of contracts. It is well known that express companies make contracts limiting their liability to fifty dollars for goods which are shipped by them, unless the value of such goods has been stated when they are left for shipment. The law will sanction such a contract.

A common carrier may, by special contract, release itself from liability for losses caused by inevitable accidents, such as fire, or perils of navigation. In a case recently decided, a bill of lading provided that goods should be delivered to successive carriers, and that no carrier should be liable for loss or damage after said goods were ready for delivery to the next carrier, and a railroad company transported the goods to a seaport and deposited them in its warehouse ready for shipment when the boats of the connecting carrier should arrive; the court held that the railroad company was not liable for the loss of the goods by fire while awaiting transportation, the fire not being caused by the negligence of the railroad company.

By Public Notices.

A common carrier may, by publicly posting a general notice, require all shippers to state the nature and value of the property to be shipped, and the carrier will be absolved from the consequences of a loss beyond the apparent value of such property. A common carrier may also limit its liability by public notice of a reasonable rule or regulation as to the manner of entry or consignment of the goods, the statement of their value and character, and the carrier's charges. If a common carrier relies on a mere notice or advertisement as a limitation of its liability, the language of the publication must be plain, explicit and unambiguous. The shipper of goods, if given reasonable opportunity, must inform himself of all rules and regulations designed to insure good faith and fair dealing, and hence a general notice publicly posted will discharge a common carrier, even though the shipper had no knowledge of such regulation. New York is the only state, to the writer's knowledge, where this rule of law does not exist.

The consignor, upon delivering goods to a common carrier for transportation, receives a bill of lading which contains the terms and conditions upon which the merchandise is to be carried. The consignor is presumed to assent to the bill of lading when he accepts it.

Contracts which are to be partly performed in the state where they are made and entered into, are governed by the laws of such state, although they are to be performed partly in another state. When, however, a contract is made in one country or state to be wholly performed in another, its validity is to be determined by the law of the place of performance. This rule was applied in a suit brought in Pennsylvania by a passenger against a New Jersey railroad corporation for the loss of his trunk, and it was held that it made no difference that the undertaking was in part to carry the baggage across the Delaware River, as the inhabitants of both states have equal rights of navigation and passage on that stream.

A consignor of goods has power to contract for their carriage and bind the consignee, but the consignor is not bound by a special contract limiting liability made by the consignee with the carrier, unless it is shown that he had notice of the consignee's contract for carriage. A contract, fairly entered into, limiting a right of recovery to a sum expressly agreed upon by the parties, as representing the true value of the property shipped, is not a contract exempting the carrier in any degree from the consequences of its own negligence, but simply fixes the rate of freight and liquidates the damages. A shipping receipt that goods are

shipped "at owner's risk" exempts a common carrier (even connecting lines of road) from liability, save for the negligence of the party charged therewith.

If the valuation of goods shipped is an agreed one, made in consideration of reduced charges, it will bind the shipper.

The general freight agent of a common carrier is authorized by the carrier and clothed with all the power to make contracts for freight, or, in respect to the carrying and delivery of freight, that the carrier itself has and to have power, therefore, to make valid contracts for the delivery of property at places on other roads beyond the terminus of the carrier's own route. A station agent or baggagemaster has only the authority to make contracts for the carriage of goods to the end of the company's road, but not to points beyond. A local station agent has no power to make a special agreement extending the liability of his company for shipments beyond his own line. It has been held that a shipper contracting with a railroad station agent for the transportation of freight is under no legal obligation to make inquiries concerning the station agent's instructions or powers. Station agents are presumed to have power to make contracts for their railroads for the transportation of freight, and the public cannot take notice of any restrictions upon their powers unless notified thereof in some way.

Carrier's Lien for Charges.

The law gives a common carrier a lien upon the goods carried by it and still in its possession as security for all compensation and charges due for their carriage, as well as all proper storage expenses. By such a lien we mean that the common carrier has the right to retain possession of the goods carried until all charges are paid. To justify a lien upon goods for their freight, the relation of debtor and creditor must exist between the owner of the goods and the common carrier. A carrier who receives goods from another carrier and who is given notice that the freight charges have been paid in advance for through shipment by the shipper, cannot acquire any lien on the goods for its proportionate share of the freight charges.

The lien given to a common carrier for freight charges has priority over the claims of general creditors of the shipper. The carrier's lien is lost as soon as it parts with the possession of the goods, but while the common carrier has control of the goods they cannot be taken by the shipper, consignee or sheriff without furnishing indemnity for the carrier's charges for transportation or storage. Unless regulated by statute a common carrier has no

right to sell the goods upon which it has a lien for charges, except by judicial order or legal process. If the goods are so sold the common carrier must account to the owner for the proceeds over and above the carrier's charge due under the lien.

Interstate Transportation.

In view of the government's attitude with reference to the proper supervision of corporations, it is of vital importance at the present time to understand clearly the legal principles which control legislation affecting corporations engaged in interstate commerce, and particularly such principles as apply to common carriers.

The Constitution of the United States vests in congress the power "to regulate commerce with foreign nations and among the several states and with the Indian tribes." It was early decided by the Federal Supreme Court that interstate commerce, or commerce among the several states of the Union, consisted of intercourse and traffic, including navigation and the transportation of passengers and property, the same as selling, purchasing and exchange of commodities between the citizens of different states.

In 1887 congress passed the Interstate Commerce Act, and assumed control of the interstate railway traffic of the country, the objects of this statute being "to secure just and reasonable charges for transportation; to prohibit unjust discriminations in the rendition of like services under similar conditions and circumstances; to prevent undue and unreasonable preferences to persons, corporations or localities; to inhibit greater compensation for a shorter than for a longer distance over the same line, and to abolish combinations for the pooling of freights."

The Interstate Commerce Commission was established to administer and enforce this act. This commission is authorized to inquire into the management of the business of all common carriers doing an interstate business, and to demand from such carriers such information as is required by the commission to properly perform its duties. The power is reserved to each state to regulate the charges of transportation wholly within the state. Congress may, however, prohibit railway companies from charging more than reasonable compensation for the services rendered by them in interstate transportation. The Interstate Commerce Act does not apply to transfer and switching companies, express companies, bridge or ferry companies, or stock-yard companies, not operating railway lines.

The first section of the Interstate Commerce Act provides

that all rates established by a common carrier must be just and reasonable, and in determining whether or not a certain rate is reasonable the commission will consider the interest of the common carrier, the shipper and the general public. The object which it is the policy of the law to effect is equality of rates. A reduction in rates does not imply that former rates were unreasonable, because such reduction may be due to an increased volume of business and a decrease in the cost of transportation.

A common carrier is prohibited by the second section of the Interstate Commerce Act from charging one shipper a greater or less compensation for any service rendered in the transportation of passengers or property than it charges another. Under this clause only unjust and unreasonable discriminations are illegal, and where a consideration exists for reduced rates, the charging of such rate will not constitute an unlawful discrimination. To render a rate illegal, some preference must be shown.

The third section of the Interstate Commerce Act forbids a common carrier making or giving any undue or unreasonable preference or advantage to any persons, firm or locality, the purpose of this section being to avoid unjust discriminations for or against any party or place, it being required that rates be substantially equal and reasonable. It can readily be seen that it is unsound in principle for a railroad to make artificial differences in market conditions by an arbitrary differential in rates so that the products of one section of the country must go to one market, and the products of a different section to another. It is hard to define what is an undue preference or advantage within the meaning of the law, but it is held to consist in giving a privilege to one party or place which is denied another under the same condition. It is the duty of the Interstate Commerce Commission to ascertain the circumstances and decide accordingly. A through rate is not an unjust discrimination against an intermediate point or against local shippers, because it is less proportionally than the rate from such point to the common destination.

A common carrier is also compelled by section three of the act to extend reasonable, proper and equal facilities for the interchange of traffic between their respective lines and to receive, forward and deliver passengers and freight to and from their several lines and those connecting therewith, and are prohibited from discriminating in their rates between such connecting lines. Charges for long and short hauls are regulated by the fourth section of the Interstate Commerce Act, this section making it unlawful for a common carrier to charge or receive any greater compensation in the aggregate for the transportation of passen-

gers or freight for a shorter than for a longer distance under similar circumstances. The object of the law is to encourage normal competition, and a schedule of rates which would stifle such competition is therefore unlawful. The law consequently imposes the duty upon a common carrier to print and keep for public inspection schedules showing the rates, fares and charges for transporting passengers and freight. It is unlawful for a common carrier to collect or demand a greater or less compensation than that which is set forth in the published schedules of charges. Any effort on the part of the shipper to secure lower rates is constituted a misdemeanor. The law further provides that a common carrier shall not raise its charges or rates as published, except after ten days' public notice.

"Pooling Freights."

Any contract, agreement or combination entered into by one common carrier with any other common carrier is unlawful under section five of the act, if such contract provides for the pooling of freights of different or competing railroads, or for dividing between them the aggregate or net proceeds of the earnings of such railroads. A money pool under which the net earnings of competing roads are divided, or a distribution of property among competing railroads, effected on percentages previously agreed upon, is prohibited by the act. This provision of the law does not apply, however, to a pooling contract between a railroad company and a pipe line company organized for the purpose of transporting oil.

The seventh section of the act under consideration is of particular interest to every shipper of goods. It forbids a common carrier from entering into any contract to prevent by change of time schedule, carriage in different cars or by any other means, the transportation of freights from being continuous from the place of shipment to their destination.

Space will not permit an analysis of every section of this act, the more important ones only being mentioned. Anyone aggrieved by a violation of this act may seek redress by proceedings before the Interstate Commerce Commission or may elect to sue in the courts of the United States, the Elkins Act of 1903 giving jurisdiction to the federal courts in the matter of any violation of the Interstate Commerce Act.

"The Railroad Rate Bill."

Experiment established the fact that many deficiencies existed in the Interstate Commerce Act of 1887, and as a result

the broader act of 1906 was passed by congress, popularly termed the "Railroad Rate Bill." The object of this law is to give broader relief for every discrimination, injustice and extortion practiced by a common carrier engaged in interstate commerce.

This act, by the first section, is made applicable to any person or corporation engaged in the transportation of oil or other commodity (except water and natural or artificial gas) by pipe lines or partly by railroads. The term common carrier is made to include express companies and sleeping car companies, and the term "railroad" within the meaning of the act shall include all bridges and ferries used or operated in connection with any railroad. This act forbids any common carrier (on and after January 1, 1907) to issue or give any interstate ticket, free pass or free transportation for passengers except to its employees and their families, its officers, agents, surgeons, physicians and attorneys-at-law; to ministers of religion, traveling secretaries of railroad Y. M. C. A.'s, inmates of hospitals and charitable institutions and persons engaged in such work; to inmates of soldiers' and sailors' homes, to necessary caretakers of live stock, poultry and fruit; to employees on sleeping cars, and to linemen on telegraph and telephone companies; to postoffice inspectors, customs inspectors and immigration inspectors; to newsboys on trains, to baggage agents, witnesses attending any legal investigation in which the common carrier is interested, persons injured in wrecks and physicians attending such persons.

An important provision of the Railroad Rate bill which will have far-reaching effect is that prohibiting any railroad company, on and after May 1, 1908, from transporting across any state or territorial line or to any foreign country any article or commodity (except timber and the manufactured products thereof) mined or produced by it, or under its authority, or which it may own, except such articles or commodities as are necessary for use in the conduct of its business as a common carrier.

Common carriers are required by the act to construct and operate upon reasonable terms side tracks and switch lines upon application of any shipper tendering interstate traffic for transportation. The common carrier must also furnish cars for the movement of such traffic without discrimination in favor of or against any shipper. The Interstate Commerce Commission is given full power to enforce these provisions of the law.

The Railroad Rate bill amends the Interstate Commerce Act with reference to the publication of rates, the Rate bill providing that common carriers must print and keep open to public inspection schedules showing all the rates, fares and charges for

transportation between all different points on its own route and between points on its own route and points on the route of any other carrier by railroad, pipe line or by water, when a through and joint rate has been established. The schedules so printed by a common carrier must plainly state the places between which property and passengers will be carried, and shall contain the classification of freight in force, also stating separately all terminal charges, storage charges, icing charges and all privileges or facilities granted or allowed, and any rules or regulations which in any wise change any part of the aggregate of such rates and charges, or the value of the services rendered to the passenger, shipper or consignee. The schedules are required by law to be printed in large type, and copies for the use of the public must be kept posted in two public places in every depot, station or office of the common carrier, where passengers or freight are received for transportation.

Another important change of benefit to the shipping and traveling public, effected by the Railroad Rate bill, is the requirement that no change shall be made in the rates, fares and charges which have been filed and published by a common carrier, except after thirty days' notice to the Interstate Commerce Commission and to the public, published as aforesaid, which shall plainly state the changes proposed to be made in the schedule then in force and the time when the changed rates, fares or charges will go into effect.

A common carrier is forbidden by the act to engage in the transportation of passengers or property unless the rates have been filed and published as provided by law. It is unlawful for any common carrier to charge a greater or less compensation for such transportation of passengers or property than those published, and the act further makes it unlawful for any common carrier to refund by any device any part of the rates, fares and charges as published, or to extend to any shipper or person any privilege of facilities except such as are set forth in the traffic schedule advertised.

The Interstate Commerce Commission is given the power under the act to establish rates or declare what shall be a proper charge in certain cases after an investigation of the circumstances.

The Interstate Commerce Commission is authorized to require annual reports from all common carriers and from the owners of all railroads engaged in interstate commerce. Such reports must be filed before the 13th day of June in each year, and must set forth the most comprehensive statistics regarding the business of the common carrier. The commission is given power to prescribe

the form of all accounts kept by a common carrier, and shall at all times have access to all accounts, records or memoranda kept by the common carrier.

Failure to publish tariff schedules and granting or accepting rebates or kindred discriminations is punishable by a fine of not less than $1,000 and not more than $20,000. The maximum fine was imposed by Judge Landis in the well-known case against the Standard Oil Company, which was, however, subsequently reversed.

Carriers of Passengers.

The subject of common carriers cannot be properly concluded without a brief discussion of the right and liabilities attaching to a common carrier of passengers, which we have only referred to heretofore in a very general way.

There is a very marked distinction between the liability between a common carrier of freight and one of passengers. A passenger has judgment and discretion and the power of locomotion, and consequently the law which holds a common carrier of freight liable as an insurer, except in cases of inevitable accident, does not apply to a carrier of passengers. A carrier of passengers is responsible for any injury to a passenger caused by its negligence or that of its servants or employees. A common carrier of passengers is bound to exercise the highest degree of care and prudence in safeguarding persons carried by it, but in regard to the baggage of a passenger it is liable as an insurer. The relation of carrier and passenger is created by contract, express or implied, and where no express contract is made, the liability of the carrier depends upon the duty imposed by law, in the event of the passenger sustaining personal injuries.

A passenger is one who enters the vehicle of a carrier with the intention of paying the usual fare for his transportation, or who is supplied with a ticket or pass, which gives him the right to ride to a given point. If a railroad company accepts passengers on a freight train, charging the regular fare, it incurs the same liability for their safety as if they were in the passenger cars. As soon as a passenger has made a contract for his passage upon a vehicle of a common carrier, and presents himself at the proper place to be transported, his right to care and protection of a passenger commences. Walking into a station, ticket office or waiting room, with intention of becoming a passenger places one in the position of a passenger. This regulation is established when a street car stops at a usual place for passengers and persons get on the steps, or the platform of a car to take passage.

If a person by mistake gets on a passenger train which does not stop at the station named in the ticket and the conductor punches it so that he cannot ride on another train, such person is entitled to all the rights of a passenger upon the train upon which he is riding. It is not necessary for a person to have entered upon the vehicle of the common carrier to constitute him a passenger, as he may become such before he enters the train or car, and before transportation begins. The fact that a person has not paid his fare at the time an accident occurs in which he is injured would not make him any the less a passenger if the conductor had not demanded his fare.

The relation of carrier and passenger ends when the passenger has been safely discharged at the point of destination called for by his ticket. Where a passenger is sleeping in a day coach when the train arrives at his destination, his failure to leave the train immediately does not terminate the relation of passenger or carrier, or alter the latter's duty to him as such. Traveling on Sunday for pleasure in violation of a statute would not alter the relation of the carrier and the passenger so as to relieve the carrier from liability for negligence.

A ticket providing for a single passage or "one continuous passage" between two points prevents the passenger from stopping at any intermediate station and renewing the journey on another train, and upon leaving a train at any intermediate point the passenger terminates his contract as such.

A trespasser, "dead head," or tramp entering a train to steal a ride is not a passenger, even though an engineer gives authority to do so. A man having an understanding with a conductor, whereby he may ride free, commits a fraud on the company and is only a trespasser. The only duty which a common carrier owes to such people is to abstain from wilful or reckless injury. A person who gets on a train after it has started or who tries to board a moving street car, is not a passenger until he has reached a place of safety inside the conveyance

A common carrier has the right to provide on its ticket that same must be used on date of issue or within a limited time thereafter. A round-trip ticket perforated for separation into two parts, and marked "not good for passage if detached," is good where the parts have become separated by accident, if both parts are presented to the conductor on the outward trip. The wrong part of a round-trip ticket returned by mistake to a passenger by the conductor, is good on the return trip.

A person entering a car at a depot to assist an aged or infirm person to a seat is not a passenger, and a common carrier only

owes to such person the duty of providing safe accommodations with regard to its depot and platforms.

If the car starts before such a person has an opportunity to leave, the party assisting a passenger on board must remain until a conductor stops the car, and any attempt to alight while the car is in motion will be at the risk of the party attempting to do so. A common carrier is under no legal obligations to hold a car until every person not a passenger leaves.

A common carrier has the right to make reasonable rules and regulations to prevent passengers from occupying positions on its cars which are dangerous, but when passengers are permitted and in certain instances required to occupy dangerous positions, the carrier must still exercise extraordinary care and diligence for their safety. As has been previously pointed out, a common carrier of passengers is not an insurer of their safety, but is required to use the highest degree of care to guard against accident. The degree of care required, of course, depends largely upon circumstances; and if an accident occurs from a defect in the roadbed, machinery, construction of cars or defective appliances of any kind, the carrier is responsible, being required to exercise sufficient care and prudence to prevent the occurrence of such accidents.

Common carriers are not bound to place bars or screens on their windows to prevent passengers putting their arms out. Carriers of passengers in conveyances operated by steam and electricity, where the consequences of accidents due to defects in machinery or appliances are usually fatal, must use every precaution which human foresight can provide to secure safety in adopting new improvements and in the general operation of their road. Thus, a common carrier has been held liable for injuries to a passenger caused by an electric shock from a hand-rail charged with electricity because of imperfect insulation, which could have been readily discovered. The rule has been established, however, that a common carrier is not liable for defects which could not be discovered by the application of any tests known or practiced, or by the usual and proper tests by skilful and experienced men.

In cases where a common carrier uses the track of another road or the bridge of another company, which it neither owns nor controls, but merely leases or obtains the right of trackage thereon, it makes the track or bridge so leased its own so far as its liability for accidents is concerned, which result from defects. A common carrier must construct its road in such a way as to resist such violence of the weather as might be expected to occur

in the climate and locality through which it runs. No one can be subjected to liability for an act done without fault on his part, and hence a carrier is not liable for an injury to a passenger caused by the breaking of a rail from the extreme cold under circumstances which human foresight could not have anticipated or prevented.

Where the conveyance is by stage coach the proprietor is required to furnish safe coaches, well-broken horses, good harness and careful drivers. Common carriers by steamboat or steamship must provide navigable vessels and even a certificate by a United States inspector that the vessel, her boilers and machinery come up to the requirements of the statute, would not exempt the owner from liability if the vessel was defective. Carriers by water must provide guard-rails and safe approaches and landings for the receipt and discharge of passengers, being liable for any injury resulting to a passenger from falling off a stage, plank or gangway.

The law requires carriers of passengers by sea to employ a qualified physician. A railroad company which assumes voluntarily to employ a surgeon to be given charge of injured persons is not liable for the negligence of the surgeon, provided he is a properly qualified medical practitioner and is furnished with proper instruments and medicine.

Discriminations Against Passengers.

All common carriers of passengers are required to receive and transport all persons who request a passage and offer to pay the fare, provided of course there is room in the car and the person applying for passage is not intoxicated or in an otherwise unfit condition. On this ground refusal of a street railway company to accept a passenger carrying in his arms a live goat was sustained by the supreme court. A common carrier is not obliged to carry a person who is fleeing from justice or one of known dangerous habits. Slight intoxication, such as would not render his conduct obnoxious to the other passengers, would not be sufficient ground to refuse a man passage on a public conveyance. A common carrier may require a blind man to secure an attendant before accepting him as a passenger, as a blind man is incompetent to travel alone, particularly on a railroad or steamboat. A common carrier may exclude from its cars any passengers who enter for the purpose of selling books, papers or refreshments, as this right is regulated by special license or agreement with the carrier. Unless regulated by a statute (as in certain of the Southern states) a common carrier cannot refuse

passage to a person on account of race or color. Equal accommodations must be provided for all, although a certain class of passengers may be required to occupy a certain part or section of the car.

Negligence.

A common carrier is compelled by law to protect its passengers from violence, insult or ill-treatment from either its servants or fellow-passengers and strangers. Any passenger injured by the wilful and malicious conduct of a servant or employee of the common carrier is entitled to damages. It has been held that where a conductor of a street car had given directions to transfer to another line, and stopped the car, but not for the purpose of enabling the passengers desiring to transfer to alight, it was the duty of the conductor to warn the passengers to keep their seats till he should give further directions. The fact that the motorman left the car on which a passenger was riding, and that the conductor took his place and became acting motorman in sole charge of the car, was not such negligence as would render the street car company liable for injuries received by a passenger in alighting from the car. It is well settled that a common carrier is liable for an assault by its conductor upon a boy who attempts to steal a ride on the carrier's car. If a passenger provokes or commences an altercation with an employee of a common carrier, and this brings an assault, it has been held that the carrier would not be liable. Mere abusive language is not sufficient to justify the commission of an assault by a conductor on a passenger. Sneers or contemptuous gestures will not justify an assault, but a conductor or other employee of a common carrier may exercise the right of self-defense if the passenger commences the assault. A passenger cannot recover for abusive language addressed to him by the conductor, or for the act of the latter in knocking him down after he had left the car, where the offensive language was used and the blow struck in response to abuse by the passenger who was the aggressor in the conflict.

If an agent or employee of a common carrier causes a passenger to be arrested without legal cause, the common carrier will be liable for false imprisonment. For example, if a passenger has been arrested upon a false charge of not having paid his fare, the common carrier will be liable. Should a conductor cause the arrest of a passenger on the ground that he had proffered counterfeit coin in payment of his fare, and it should subsequently be proved that the coin was good, the carrier would not be liable for false arrest. This conclusion seems to contradict the previous statement, but the rule is based on the principle

that the conductor in causing the arrest of the alleged counterfeiter was not acting within the line of his duty as agent of the common carrier, but was performing a supposed service to the community by procuring the arrest of a person presumed to be a criminal.

A street railway company is not guilty of negligence in operating its cars during a strike of its employees, and if a passenger was struck and injured by a missile thrown by one of a mob of striking employees of the street car company, he would not be entitled to recover damages from the common carrier. The duty of the common carrier is to protect its passengers from harm, and any assault or violence from a fellow-passenger, and would be hence liable if one of its employees permitted a drunken and disorderly person to enter the car after being once ejected, even if the employee had no reason to believe that the ejected passenger would again become disorderly or assault any of the passengers. A common carrier would not, however, be liable to a passenger for injuries received by being thrown down or jostled by a drunken passenger who is being ejected from the car by the conductor who is using due care. It has been held, on the other hand, that a quarrel by a guard on an elevated railroad train with an intoxicated passenger, upon a crowded platform, by which a crowd is caused to jostle a passenger on the platform so as to lead him to seize the railing, whereby his arm is caught between the railings and two cars and injured, is such negligence as would render the common carrier liable in damages to the injured party.

Not only does a common carrier owe a duty to well passengers, but also to those who are sick. A common carrier has the right to exclude one whose sickness would be detrimental to the safety, health or comfort of the other passengers, but such right must not be exercised inhumanely. For illustration, a common carrier has the right to reject a passenger who breaks out with any eruption which, according to the best medical advice at hand, is believed to be smallpox, even though such belief is a mistaken one. A passenger suffering from delirium tremens, to the annoyance of the other passengers, may be ejected, on the same principle, without liability on the part of the common carrier.

It is the duty of a passenger to take a seat on the inside of a car if he can find one, and standing on the front or back platform of a car has been held to be contributory negligence, which would debar the passenger, if injured, from recovering damages. The employees of a street car company are required to exercise greater care where a passenger is forced to ride upon the step

of a car, because he cannot find a seat inside. Precisely the same care is not due every passenger without regard to age, sex or bodily infirmity, because if a passenger is crippled, infirm or of tender years the carrier's duty must be performed with due regard to such condition.

Premature starting of a car or sudden jerking or jolting when stopping is negligence on the part of the common carrier. The weight of authority imposes the duty on the common carrier to announce each station at which a stop will be made. An announcement by a conductor or brakeman of the station the train is approaching is the ordinary method of warning the passengers that the train is nearing the station, so that they may alight at their destination. It is the duty of every traveler to ascertain upon purchasing his ticket and before boarding the train whether it will stop at all the stations on the route or only the principal ones. Passengers have the right to rely on the information given them by the ticket agent as to the stoppages of the train. A common carrier is liable in damages for failure to stop at a station at which it is scheduled to stop. The mere crowded condition of a train of cars is not a legal excuse for failure to stop a train at the station called for by the ticket of the passenger, for fear still more passengers would get on board. If a passenger wants to get off at a flag station, at which the train does not stop except on signal, the carrier will not be liable for carrying him to the next station, no matter how far distant, unless the passenger gave the conductor timely notice to stop at such flag station. Upon making a stop, proper warning of the departure of the train must be given. A call of "All aboard" made by a conductor or trainman prematurely is an invitation to board the train, and, if at such time it was unsafe to do so, the common carrier would be liable to any one misled thereby.

A railroad company is entitled to designate certain doors and steps by which its passengers shall leave its train, and is consequently not liable for injuries received by a passenger who attempts an unusual mode of egress. If a train or car has gone beyond the station platform, the passenger should request the conductor to back up the train to enable him to step on the platform. Jumping from a moving car which has passed a desired station will exempt the common carrier from liability. If a passenger is carried beyond his destination, he has the right to recover damages for the inconvenience, loss of time, and expense of traveling back. Failure to stop at the point called for by the passenger's ticket is not only breach of contract, but also negligence. If the train has passed the desired station, the passenger

should request the conductor or other agent of the railroad to run the train back to the proper station. In one case a passenger carried beyond her destination, got off the train and attempted to walk back in the night time and was injured. Her right to recover was denied by the court on the ground that it was the duty of the passenger to request the conductor to return to the station her ticket called for.

The publication of a time table by a railroad or other common carrier imposes the duty to have the trains arrive and depart at the precise moments indicated. If a fireman neglects to get up steam in time to start a passenger train according to schedule, any passenger suffering loss by reason of such delay may recover damages therefor. For example, a theatrical troupe, lecturer or opera singer, prevented from reaching a destination in time to fulfil an advertised engagement, by the negligence of the common carrier, can recover such damages as can be proved. A case is made stronger, however, by notifying the common carrier of the urgent necessity of prompt carriage.

Carrier's Duty to Provide Seats.

It is impossible to go into all the intricacies of negligence as applied to common carriers, in a book of this kind; but as practically every one uses a public conveyance more or less, it is of the greatest importance to understand thoroughly the legal principles which regulate the rights and liabilities of common carriers and passengers. A knowledge and observance of the rules stated will tend to avoid considerable unnecessary trouble and expense.

The law requires a common carrier to provide its passengers with seats. This rule does not apply to street railway companies in the absence of special statutory provision. A passenger who accepts transportation on a railroad train is presumed to waive his right to a seat, and upon his refusal to surrender his ticket or pay fare, may be ejected, the passenger having no right to ride free if not furnished with a seat. It has been held that a male passenger who has taken a seat in a car exclusively reserved for ladies cannot lawfully be removed from the train without being offered a seat elsewhere. It is obligatory on a conductor of a train to furnish a holder of a first-class ticket with a seat in a first-class coach.

Passenger's Baggage.

Passengers are permitted to carry with them, and a carrier is in duty bound to protect, such articles of personal convenience

and necessity, generally designated as baggage. Books bought for another person, cloth for a dress intended for a third person, deeds and legal documents, Masonic regalia, engravings, etc., have been held not to be baggage. A sportsman may take with him as baggage on an excursion in addition to his clothing, his guns and fishing tackle, a musician his favorite instrument, and a mechanic his tools. But a railroad company is not obliged to carry as baggage a box of guns, a pianoforte or the tools of a machine shop, or stage costumes and scenery. The Supreme Court of Pennsylvania has decided that a passenger cannot recover for an embroidered table centerpiece of her own, and a dress belonging to her mother, carried with her own personal clothing. A distinction must be made between what is baggage and what is freight. The rule followed may be thus stated: Baggage consists of such articles as are usually carried by passengers for their personal use, comfort, instruction, amusement or protection. The length and character of the journey must be considered and the station in life occupied by the passenger. For instance, what might be considered as freight for a tramp or peddler would be construed as baggage if carried by a millionaire or United States Senator or Ambassador. Jewelry not intended to be worn on the person is freight.

PATENTS

Patentable Invention—The Application—Caveats—Infringement.

THE subject of patents, trade-marks and copyrights, although more or less technical, is, nevertheless, of general importance and easily understood. We will, therefore, direct our attention to a brief analysis of the fundamental principles underlying this interesting and practical branch of the law.

Article I, Section 8, of the Constitution of the United States vests in congress the power to promote the progress of science and the useful arts by securing for limited times to inventors the exclusive right to their respective discoveries, which power forms the foundation of our patent system. In pursuance of the authority vested in it by the constitution, congress has enacted various laws from time to time, the principal statute now in force being Section 4886 of the Revised Statutes, which provides as follows:

"Any person who has invented or discovered any new and useful art, machine, manufacture or composition of matter, or any new and useful improvement thereof, not known or used by others in this country, and not patented or described in any printed publication in this or any foreign country before his invention or discovery thereof, and not in public use or on sale for more than two years prior to his application, unless the same is proved to have been abandoned, may, upon payment of the fees required by law and other due proceedings, obtain a patent therefor."

Discovery and Invention.

The word "discovery" as used in the patent laws is synonymous with the word "invention." Laws of nature can never be invented by man, although they may be discovered. When discovered they may be utilized by means of an art, a machine, a manufacture or composition of matter. Any idea which is new and useful, and which is the product of some exercise of the inventive faculties, is patentable. Every invention which is new and useful is not, however, patentable. A mere change of form, for example, does not constitute patentable invention. To illustrate, changing the body of a coal car from rectangular form to conoidal form is not invention, because such change of form

is only an application to the art of constructing car bodies of a principle of construction which was well known in other arts. It may be stated as a general rule that a mere change of size is not a patentable invention, but in the case of the invention of the safety lamp by Sir Humphry Davy the changing of the size of the perforations in the lantern case produced an entirely new and useful result, which entitled the inventor to protection. Ordinarily a mere change of proportions will not be patentable. Under certain circumstances such a change may be protected. Consider the case of combining India rubber and sulphur. Charles Goodyear discovered that when crude India rubber was combined with sulphur in small quantities, and the compound heated, it became what is known as soft vulcanized rubber, the properties of which were pliability and extensibility, the changed product being less affected by the heat and cold than crude rubber. Nelson Goodyear discovered later that if the proportions of the same two materials were changed by increasing the sulphur to twenty-five per cent and upward of the rubber, the compound upon being heated lost the soft, pliable quality of crude rubber and assumed the properties of horn, being non-extensible and susceptible of being polished. Such a substance is known as hard rubber or vulcanite, and, although involving a mere change of proportions, was held to be patentable. It must be borne in mind, however, that if the change in proportions effects no change in the properties of the compound, or in its mode of operation, then the change is not entitled to protection by patent.

A mere change of material does not entitle the inventor to protection under our patent laws, but if such change imparts to a machine or device of any kind a new quality or property not previously possessed the same would be patentable. For example, the rolls on the old-fashioned wringers or washing machines used to be covered with cloth or felt, both of which were more or less elastic. The idea was conceived of covering the rolls with rubber, which was not only elastic, but also impermeable to water; this invention was of course a mere change of material, but gave to the machine such additional properties of general usefulness that it was held to be patentable.

Things not Patentable

The mere change of location in the parts of a machine is not patentable, but if such change introduces a new mode of operation into the particular class of machines in which the change is made, or dispenses with part of an old mechanism, the inventor

is entitled to a patent. A mere application of an old thing to a new purpose, or a double use of an old thing, is not patentable. As the term "patentable invention" is of such broad significance, we can better understand what is patentable by considering what is not. There are instances in which a change of application of an old thing to a new purpose amounts to patentable invention. For illustration, the annealing of articles of metal by first heating them to a sufficient temperature long enough to permit the molecules to assume the same condition throughout the mass, and by then compelling or permitting them to cool slowly, had been well known for a long time, and among such articles were the metallic specula of reflecting telescopes, which had been taken hot from the molds in which they were cast, put into a heated oven and had been permitted to cool slowly therein. With such knowledge in existence Whitney patented a process for annealing the chilled cast-iron wheels of railroad cars. A new and previously unknown result is obtained, namely, the relief of the plate of the wheels from inherent strain without impairing the chilled tread—a result which had not been obtained before Whitney's invention. This example shows that when an old thing is applied so as to obtain a new result (the production of a chilled car wheel free from internal strains), the change or thing done is not a mere application of an old process to a new or different thing, but is an invention which should be protected by a patent.

An invention comprising the substitution of one old device for another is not patentable, when the substituted device does no more than the device which it replaces. However, the substitution of a circular saw in a shingle-sawing machine for the old-fashioned perpendicular saw was held to be patentable, on the ground that it was a most practical improvement, was useful and had not been known or used before.

It is a well-settled principle of patent law that there is no invention in the mere duplication of old devices. Where a new mode of operation is effected by duplication, the invention may be patented.

Under Section 4929, of the Revised Statutes, as amended May 9, 1902, any person who has invented any new, original and ornamental design for an article of manufacture, may, subject to certain conditions and limitations, obtain a patent therefor.

A useful art, as distinguished from the liberal, polite or fine arts, is a mode of treatment of, or a method or way of operating upon an object by which a change in its form, quality or properties is produced. This art includes what are commonly called methods or processes, whether they be simple or compound.

Basic Idea of the System.

The patent system was founded for the purpose of stimulating improvements in the useful arts and sciences, by giving to inventors a monopoly upon the subject-matter of the invention. The principal elements of a patentable invention is that it must be new and useful. As to the extent of the change that is required to constitute invention, the courts have held that it is of no consequence whether the invention be simple or complicated, whether it be the result of accident or of long and laborious thought, or by an instantaneous flash of the mind. The law looks to the facts and not to the process by which it is accomplished. It gives the first inventor or discoverer the exclusive right to use it, and asks nothing as to the mode or extent of the application of his genius to conceive or execute it. Many of the patents or inventions which have been upheld are such slight changes from former modes or machines as to be tested in their material diversity chiefly by their results, such as the flame of gas rather than oil; the hot blast rather than the cold, charcoal used in making sugar, hot water in place of cold in making cloth. If in a patented improvement a new and useful result has been attained, neither the simplicity of the structure, nor the greater or lesser amount of intellect employed are of importance in determining the validity of the invention.

The law protects an inventor in the use of his invention for the period of seventeen years from its date. Applications for letters patent of the United States must be made to the Commissioner of Patents, and must be signed by the inventor, if alive. It is well before incurring the expense of an application to have a preliminary search made, which can be done at a very nominal cost. Any patent or other reference which would constitute an anticipation of the inventor's idea will be developed in such search, and the patentability of the invention determined.

A complete application comprises a petition, specification, oath and drawings. A model is sometimes, though rarely, required. The petition must be addressed to the Commissioner of Patents and must set forth the name, present nationality, residence and present postoffice address of the petitioner, and request the grant of a patent for the inventor, and not of an assignee of the inventor, although it may request that the patent, when granted, shall be granted to an assignee.

Specifications.

The specification is a written description of the invention or discovery, and of the manner and process of making, construct-

ing, compounding and using the same, and is required to be in such full, clear, concise and exact terms as to enable any person skilled in the art or science to which the invention or discovery appertains, or with which it is most nearly connected, to make, construct, compound and use the same. It is further required that in the specification must be set forth the precise invention for which a patent is solicited, and explain the principle thereof, and the best mode in which the applicant has contemplated applying that principle, in such manner as to distinguish it from other inventions. In a case of a mere improvement, the specification must particularly point out the parts to which the improvement relates, and must in explicit language distinguish between what is old and what is claimed as new; the description and drawings, as well as the claims, should be confined to the specific improvement and such parts as necessarily co-operate with it. The specifications must conclude with a specific and distinct claim or claims of the part, improvement or combination or discovery. When there are drawings the description will refer to the different views by figures, and to the different parts by letters or numerals. The rules of practice of the United States Patent Office require that the following order of arrangement should be observed in framing the specification:

1. Preamble stating the name, citizenship and residence of applicant and title of the invention;
2. General statement of the object and nature of the invention;
3. Brief description of the several views of the drawings;
4. Detailed description;
5. Claim or claims;
6. Signature of applicant.

It is not necessary that an applicant should be represented by an attorney, but in view of the fact that the value of the patent, as a monopoly, depends upon the care with which the claims are drawn, it is advisable to employ an attorney, whose technical knowledge and experience qualify him to better protect the invention. An inventor may, by directing a letter to the Commissioner of Patents, secure a copy of the rules of practice of the Patent Office, with forms for the different parts of an application.

Two or more independent inventions cannot be claimed in one application, but where distinct inventions are dependent upon each other and mutually contribute to produce a single result, they may be claimed in one application. If several inventions

claimed in a single application, be of such a nature that a single patent may not be issued to cover them, the inventor will be required to limit the description, drawing and claim of the pending application to whichever invention he may elect. The other inventions may be made the subjects of separate applications, which must conform to the rules applicable to original applications.

Applicant's Oath.

The oath is a very necessary part of every patent application. The applicant must make oath or affirmation that he verily believes himself to be the original and first inventor or discoverer of the art, machine, manufacture, composition or improvement for which he solicits a patent; that he does not know and does not believe that the same was ever before known or used, and shall state of what country he is a citizen, and where he resides, or whether he is a sole or joint inventor of the invention claimed in his application. In every original application the applicant must distinctly state under oath that the invention has not been patented to himself or others with his knowledge or consent in the United States or any foreign country for more than two years prior to his application for a patent filed in any foreign country by himself or his legal representatives or assigns more than twelve months prior to his application.

Whenever the nature of an invention admits of it, a drawing must be furnished by the applicant. A model is only required when the examiner of the application is unable to fully understand the operation of the invention from the drawings.

Applications filed in the Patent Office are classified according to their various arts and are taken up for examination in their regular order of filing. The applicant is notified at the proper time whether or not his application is accepted or rejected.

If rejected, the reasons will be fully and precisely stated and such information and references will be given as will be useful in aiding the applicant to judge of the propriety of prosecuting his application or of altering his specification.

The applicant has the right to amend before or after the first rejection or action; and he may amend as often as the examiner presents new references or reasons for rejection. An amendment must be filed within one year after the last rejection by the Patent Office, otherwise the application becomes forfeited.

Costs.

The filing fee on each original application for a patent, except in design cases, is $25.00, and $1.00 for each claim in excess of

twenty. Final fees in same amount must be paid before the issuance of a patent. After an application has been allowed, a final fee must be paid at any time within six months after receiving formal notice of allowance. The cost of drawings and attorney's fee vary according to the nature of the invention. The average cost of a patent, including a preliminary search, is about one hundred fifty dollars.

Reissue of Patents.

The law provides that a patent may be surrendered and reissued to the original patentee, his legal representatives or assigns, whenever the original patent is inoperative or invalid by reason of a defective or insufficient specification, or by reason of the patentee claiming as his invention or discovery more than he had a right to claim as new, provided the error arises from accident or mistake.

An inventor, upon filing his application, should mark his machine or device "Patent Applied For." He cannot sue for damages for the infringement of his invention until the patent has issued, but the above marking serves as a notice to the public that protection is sought. Thus a possible infringer would be warned not to commence the manufacture of the invention, because he could be prohibited from selling same as soon as the patent has issued.

ASSIGNMENT OF PATENT

WHEREAS,

did obtain Letters Patent of the United States for

which Letters Patent bear date the day of 19 and are numbered

AND WHEREAS, *now sole owner of the said Patent and of all rights under the same*

AND WHEREAS,

desirous of acquiring interest therein:

NOW THEREFORE, TO ALL WHOM IT MAY CONCERN, *be it known, that for and in consideration of the sum of*

to in hand paid, the receipt of which is hereby acknowledged, have sold, assigned and transferred, and by these presents do sell, assign and transfer unto the said

all the right title and interest in and to the said Invention, as secured to by said Letters Patent, for, to and in

and in no other place or places: the same to be held and enjoyed by the said

for own use and behoof, and the use and behoof of legal representatives, to the full end of the term for which said Letters Patent are or may be granted, as fully and entirely as the same would have been held and enjoyed had this sale and assignment not been made.

IN TESTIMONY WHEREOF, *have hereunto set hand and affixed seal at , in the County of , and State of this day of , A. D. 19*

SEALED AND DELIVERED IN THE PRESENCE OF US: [L.S.]

[L.S.]

ASSIGNMENT OF PATENT LICENSE

THIS INDENTURE, *Made this day of , between of , hereinafter called "the vendor," of the one part, and of , hereinafter called "the purchaser," of the other part:* WHEREAS, *by license under seal dated , and made between , the licensor, of the one part, and the vendor, of the other part, the said licensor granted unto the vendor, and his assigns the sole and exclusive right within the city of to manufacture articles according to the invention mentioned in said license, and the letters patent in respect thereof, for the residue of the term of fourteen years comprised in the said letters patent, at royalties payable half-yearly on every day of and day of , and subject to the covenants and conditions therein contained; and whereas the vendor hath, from the date of the said license up to the present time, worked the said invention in the said city in accordance with the terms thereof; and whereas the vendor lately agreed with the purchaser for the sale to him of his business in the said city of manufacturing and selling the said articles, and the business of a as from the said day of last; and whereas it was part of the said agreement that the purchaser should purchase the said license for the sum of dollars; Now this indenture witnesseth, that in consideration of dollars, he, the vendor, doth hereby assign unto the purchaser all that the said license and the full benefit thereof; to hold the same unto the purchaser and his assigns subject to the covenants and conditions therein contained, and henceforth on the part of the license to be performed or observed: and the vendor doth hereby covenant with the purchaser that, notwithstanding anything by him done or omitted or knowingly suffered, the said license is now valid and subsisting and not void or voidable, and that all the royalties reserved by the said license have been paid up to the day of last, and that all the covenants and conditions therein contained, and on the part of the licensee to be observed and performed, have been observed and performed up to this present time; and the purchaser doth hereby covenant with the vendor that he will, as from the said day of last, pay the royalties and other sums by the said license reserved, and also will perform and observe all the covenants and conditions therein contained and on the part of the licensee henceforth to be performed, and keep the vendor indemnified against all actions, claims, and expenses in respect of the said royalties, sums, covenants, and conditions, or any of them respectively.*

IN WITNESS, *&c.*

APPLICATION FOR PATENT

PETITION

TO THE COMMISSIONER OF PATENTS:

The petition of[1]

citizen

of *residing at*
in the County of *, State of* *,*
pray that Letters Patent may be granted to *for*
improvement in

as set forth in the annexed Specification.

And *hereby appoint*[2]

of
Registration, No. *,* *Attorney,*
with full power of substitution and revocation, to prosecute this application, to make alterations and amendments therein, to receive the Patent, and to transact all business in the Patent Office connected therewith. My Post Office address is

Signed at *, in the County of*
and State of *, this* *day of*
19

Sign here, first name in full. ☞

SPECIFICATION

TO ALL WHOM IT MAY CONCERN:

BE IT KNOWN, *That*

citizen

of *, residing at*
in the County of *, and State of* *,*
ha invented certain new and useful improvements in

of which the following is a specification

IN TESTIMONY WHEREOF *affix signature in presence of two witnesses.*

Sign here, first name in full. ☞

Two witnesses. ☞

OATH TO ACCOMPANY AN APPLICATION FOR UNITED STATES PATENT

} *ss:*

,[1] the above-named petitioner , being sworn (or affirmed), depose and says that citizen of[2] and resident of[3] , that verily believe to be the original, first, and[4] inventor of the imporvement in[5] described and claimed in the annexed specification; that do not know and do not believe that the same was ever known or used before invention or discovery thereof, or patented or described in any printed publication in any country before invention or discovery thereof, or more than two years prior to this application, or in public use or on sale in the United States for more than two years prior to this application; that said invention has not been patented in any country foreign to the United States on an application filed by or legal representatives or assigns more than twelve months prior to this application; and that no application for patent on said improvement has been filed by or representatives or assigns in any country foreign to the United States, except as follows:[6]

Inventor's full name:[7] }

Sworn to and subscribed before me this day of , 19

[SEAL.]

(Signature of justice or notary.)

[8](Official Character.)

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[1] *If the inventor be dead, the oath will be made by the administrator; if insane, by the guardian, conservator, or legal representative. In either case the affiant will declare his belief that the party named as inventor was the original and first inventor.*

[2] *If the applicant be an alien, state of what foreign country he is a citizen or subject.*

[3] *Give residence address in full; as "a resident of , in the county of , and State of ," or "of No. street, in the city of , county of , and State (Kingdom, Republic, or Empire) of ."*

[4] *"Sole" or "joint."*

[5] *Insert title of invention.*

[6] *Name each country in which an application has been filed, and in each case give date of filing the same. If no application has been filed, erase the words "except as follows."*

[7] *All oaths must bear the signature of the affiant.*

[8] . . . *"When the person before whom the oath or affirmation is made is not provided with a seal, his official character shall be established by competent evidence, as by a certificate from a clerk of a court of record or other proper officer having a seal."*

A certificate of the official character of a magistrate, stating date of appointment and term of office, may be filed in the Patent Office, which will obviate the necessity of separate certificates in individual cases.

When the oath is taken abroad before a notary public, judge, or magistrate, his authority should in each instance be proved by a certificate of a diplomatic or consular officer of the United States.

TRADE-MARKS

Defined—Registration—Test of Validity—Assignments—Abandonment.

A TRADE-MARK has been judicially defined as "the name, symbol, figure, letter, form or device adopted and used by a manufacturer or merchant in order to designate the goods he manufactures or sells and distinguish them from those manufactured or sold by another, to the end that they may be known in the market as his, and thus enable him to secure such profits as result from a reputation for superior skill, industry or enterprise." A trade-mark in reality is a notice indicating the origin and ownership of the goods to which it is applied, and cannot exist apart from a business or the good-will of a business.

Trade-marks are of the most ancient origin. When Daniel was delivered into the den of lions, we read in the Sixth Chapter of the Book of Daniel, verse 17: "A stone was brought and laid upon the mouth of the den, and the King sealed it with his own signet and with the signet of his lords;" and in the earliest history of commerce frequent references are made to the subject of trade-marks. In view of their general adoption it is well to inquire briefly into the law regulating their application.

The right to the use of a trade-mark is one which acknowledges no territorial boundaries and is not limited in time; it is such a right as must exist exclusively in the proprietor, either individually or jointly with others, and may be regarded as one's commercial signature. To prevent the public from being deceived into purchasing the goods and manufactures of one person, supposing them to be those of another, the law gives to the original appropriator of a distinctive trade-mark the exclusive privilege of using it, and a court will restrain another from using it or award damages to the owner for such unlawful use thereof.

The object of using a trade-mark is to bring seller and buyer together, that the one may sell his merchandise and the other obtain the particular goods the reputation of which has won his confidence; it guarantees to the purchaser the genuineness of the article bought. The object of the law is to secure to him who has been instrumental in bringing into the market a superior article of merchandise the fruit of his industry and skill, and to protect the community from imposition, thus preventing

fraud upon the manufacturer and deception upon the public. The adoption of a trade-mark to indicate the manufacture of a certain article does not give any right to the exclusive production of the article so marked, as any article of manufacture, unless it be protected by a patent, may be sold by any person, it being the right of any person possessing sufficient skill to copy or imitate any unpatented article. No one, however, can use a trade-mark to pretend that the goods offered by him are the products of another. The theory upon which the law of trade-marks is based is the promotion of honesty and fair dealing. A trade-mark does not partake of the character or nature of a patent or copyright, as there is no property right to a trade-mark apart from the goods to which it is applied. Consequently the right to a trade-mark is one which can be tested only by its violation. So long as no one imitates the trade-mark the proprietor has no means of testing its validity.

It is necessary to distinguish between trade-marks and trade names. A manufacturer may have no trade-mark, and yet may be entitled to restrain another from imitating the form, color or general appearance of his labels, packages or articles, from in any way dressing up goods so as to cause them to be mistaken for his, or from resorting to any trick or artifice whereby another's goods are palmed off on the public as his. Such actions involve what is known as unfair competition in trade, which subject will be discussed hereinafter, and should not be confused with trade-marks.

There are three characteristics of a technical trade-mark: First, it must point distinctively, either by its own meaning or by association, to the origin or ownership of the article to which it is affixed; second, it must be affixed or applied to a commercial article; and, third, it must be of such nature that it can be rightfully appropriated by one person to the exclusion of all others.

A trade-mark will not be registered which consists of immoral or scandalous matter, or comprises the flag, coat of arms or other insignia of the United States, or any state, municipality, or foreign nation. Nor will a mark be registered which embraces any design or picture adopted by any fraternal society or which contains the name, mark, emblem, colors, flag or banner adopted by any organization which was incorporated in any state of the union prior to the date of the adoption and use of said mark by the applicant for registration.

What May Be Appropriated as a Trade-Mark.

A trade-mark is not limited to a device or name, but may consist of any marks, forms or symbols which serve to designate the

true origin or ownership of the article. Fancy names, the names of places, the name of an article which alone designates its origin or ownership, letters and numerals combined in unusual and peculiar forms, have been held to be valid trade-marks. A man, of course, may adopt for a trade-mark whatever he chooses, but when he asserts and seeks to enforce exclusive rights therein it becomes necessary to ascertain whether it is just to others that this be permitted. If the name, device or description is purely arbitrary or fanciful, and has been first brought into use by him, his right to the exclusive use of it is unquestionable. No exact statement of what a trade-mark may consist can be made. The true test is, was the mark adopted or has it come by use to indicate primarily the origin of ownership of the article to which it is applied? Can others, with equal truth, use it for the same or a like article?

A proprietor of a trade-mark may manufacture and sell several different grades or qualities of the same general line of goods, and may adopt a separate mark for each quality or grade. If the primary function of each mark is to denote origin or ownership of the article with the proprietor, each mark will be a valid trade-mark.

Trade-marks may be divided into those which are personal and those which are impersonal. A personal trade-mark is one which will indicate to the public that some particular person has given his personal skill to the production of the article to which it is applied. An impersonal trade-mark is one which does not indicate that a certain article is the product of the skill of the owner of the trade-mark, but which points to him as the owner or proprietor of the manufactory or business in which such articles are produced. Impersonal trade-marks may be strictly local or perhaps become so by usage, and indicate origin at a certain place of production, without reference to the owner of the mark. Such a trade-mark passes with a transfer of the manufactory. Examples of this class of trade-marks are found in the names "Congress Water" and "Bethesda Water" and "Old Oscar Pepper Distillery," applied to the whisky produced at a certain place.

It is a well-established rule that a trade-mark must not be deceptive. Common words, when employed as trade-marks, must not give a false impression as to the qualities, ingredients or characteristics of the article. The word "Home" for sewing machines, "Star" and a symbol of a star for shirts, "Royal" for baking powder, "Yankee" for soap, and "Old Crow" for whisky, are examples of common words which have been held to constitute valid trade-marks. The trade-mark must not be deceptive, but arbitrary or fanciful.

Personal Names as Trade-Marks.

Considerable doubt has existed among the authorites as to whether or not a personal name may be used as a trade-mark. A personal name does not respond to the tests for a technical trade-mark, for the reason that no one can have the exclusive right to such a name against another person having the same name and using it in good faith. There is, however, no reason against appropriating a trade-mark consisting of a personal name used in some peculiar or distinctive design or form. It has been held that when a commercial name, not the subject of appropriation as a trade-mark, is combined with other distinctive features, including the manufacturer's name, the whole may be adopted by him as a trade-mark, and he will be entitled to protection against such a fraudulent imitation of his wrappers and labels, bearing such trade-mark, as will enable others to deceive the public and injure his business. Hence, when the plaintiff, in the case in mind, adopted a trade-mark consisting as a whole of printed copies of the medals awarded him by the United States Centennial Commission, with words "Dreydoppel's Borax Soap" printed underneath, and used it upon his wrappers and labels he is entitled to the exclusive use of such trade-mark, and to protection against infringement of it.

Every one has the absolute right to use his own name honestly in his own business for the purpose of advertising it, even though he may thereby incidentally interfere with and injure the business of another having the same name. Where, however, two persons have the same name and use it to distinguish an article or commodity produced by them of like character, and it is clearly shown that the later user does so for the purpose of imposing his own article upon purchasers for the prior user's article, which has become well established, it is, on the part of the later user, an imposition upon the public and an attempt to secure to himself what rightfully belongs to another. To illustrate: Every one is familiar with the widespread reputation of the De Long hook and eye. Suppose a rival concern employs a man by the name of De Long and makes him its president or general manager and thenceforth advertises the De Long hook and eye, justifying such action by the statement that its president is named De Long and has a right to the use of his own name. Under such circumstances the court would restrain the second De Long from imposing his own article upon the public as the original De Long hook and eye. Another well-known trade-mark involving a personal name is that of "Roger Brothers" as applied to the silverware made by the well-known New England firm.

A newly-coined word constitutes one of the strongest trade-marks, the reason for which is obvious. To entitle the originator thereof to hold such a word as a valid trade-mark, it is only necessary to show that it has been used or applied to commercial articles for the purpose of indicating the ownership or origin of the same. Illustrations of such trade-marks are found in the words "Sapolio" as applied to a cleaning compound; "Cottolene" as applied to the well-known substitute for lard; "Cuticura" as applied to a medicinal preparation; "No-To-Bac" as applied to a medicine to cure the tobacco habit, and countless other words.

Certain phrases, of an original nature, may also be used as valid trade-marks, as, for example, the phrase "Coal Oil Johnny's Petroleum Soap," "Lone Jack" to indicate a brand of tobacco and "La Favorita" a brand of flour. Numerals have also been held to constitute valid trade-marks. In a certain case the manufacturer of steel pens had for many years manufactured a peculiar pattern on which were the figures "303" and the words "Extra Fine." These pens were put up in paper boxes labeled with the same numerals and words. Another manufacturer began to make and sell a steel pen very much the same as the original manufacturer, on which were stamped "303" and "Esterbrook & Co., Extra Fine." The latter was sued and the supreme court held that he had no right to use numerals and words which had been previously appropriated by another to the same class of goods.

A picture which is not deceptive may be used as a trade-mark, either alone or with other devices. The Supreme Court of Pennsylvania has held that a representation of a cornucopia printed upon cakes of butter constituted a valid trade-mark. It may be laid down as a general rule of trade-mark law that a merely geographical term cannot be used as a trade-mark. A geographical term may acquire a secondary meaning in the trade from having been long used as a designation of a particular manufactured article and thus to have lost, so far as such article is concerned, its geographical significance. For example, the name "Waltham" on watches was originally used as a geographical term, but through continued use it gradually acquired a secondary meaning as a designation of watches of a particular class, and the public came to recognize that watches stamped with the name "Waltham" were made by the American Waltham Watch Company. Under the circumstances of this case, the name "Waltham," although geographical, was held to be a valid trade-mark.

Registration of Trade-Marks.

A common-law trade-mark may be acquired by any person, firm or corporation. To protect the owner in the use of a trade-mark, it should be registered. Space will not permit a detailed discussion of what may and what may not be registered as a trade-mark, but as registration of all marks is provided for by act of congress, May 4, 1906, as amended, it is well to refer to these acts for the law at present in force in this regard.

It is provided by congress that no trade-mark will be registered to an owner domiciled in the United States, unless it is made to appear that the same is used as such by said owner in commerce among the several states, or between the United States and some foreign nation or Indian tribe. Any owner of a trade-mark who shall have a manufacturing establishment within the territory of the United States shall be accorded, so far as the registration and protection of trade-marks used on products of such establishment are concerned, the rights of owners of trade-marks domiciled within the territory of the United States.

No trade-mark will be registered which is identical with a registered or known trade-mark owned and in use by another, and appropriated to merchandise of the same general character, or which so nearly resembles a registered or known trade-mark owned and in use by another, as to cause confusion or mistake in the mind of the public and thus deceive purchasers. No trade-mark will be registered which merely consists in the name of an individual, firm, corporation or association, not written, printed, impressed or woven in some particular or distinctive manner or in association with the portrait of the individual; no portrait of a living individual will be registered as a trade-mark, except by the consent of such individual, evidenced by some instrument in writing. It is furthermore provided by law that no trade-mark will be registered which is used in unlawful business, or upon any article injurious in itself or which has been used with the design of deceiving the public in the purchase of merchandise, or which has been abandoned.

Application for Registration.

To register a trade-mark, the rules of practice of the Patent Office require that an application must be made to the Commissioner of Patents and must be signed by the applicant. Such an application comprises a petition, requesting registration; a state-

ment setting forth the name, address and citizenship of the owner of the mark; the class of merchandise, and the particular description of goods comprised in such class, to which the trade-mark is attached; a description of the trade-mark itself is only required when needed to express colors not shown in the drawing. The statement must also set forth the mode in which the trade-mark is affixed to the goods, and the length of time during which the same has been used. If the applicant is a corporation it must be stated under the laws of what state its charter was granted. Besides the petition and statement, a declaration must be filed as part of the application which is in the nature of an oath verifying the truth of the facts contained in the statement. A drawing of the trade-mark must also be furnished to the Patent Office, which drawing shall be a fac-simile of the mark as used upon the goods. Furthermore, five specimens of the trade-mark must be forwarded with the application. The charge of registering a mark is ten dollars, which must be paid upon filing the application

Duties of Registrants.

A complete application for the registration of a trade-mark is considered in the first instance, by the examiner in charge of trade-marks. Whenever on examination of an application, registration is refused for any reason whatever, the applicant will be notified thereof. The reasons for such refusal will be stated, and such information and references will be given as may be useful in aiding the applicant to judge of the propriety of further prosecuting his application.

If on examination of an application for the registration of a trade-mark it shall appear that the applicant is entitled to have his trade-mark registered under the provisions of the law, the mark will be published in the official gazette (a Patent Office publication) at least once, which publication shall be at least thirty days prior to the date of registration. The act of congress of February 20, 1905, provides that if no notice of opposition be filed within thirty days after such publication, the applicant or his attorney will be duly notified of the allowance of his application, and a certificate of registration will be issued.

It is provided by the Rules of Practice of the Patent Office that whenever application is made for the registration of a trade-mark which is substantially identical with a trade-mark appropriated to the goods of the same descriptive properties, for which a certificate of registration has been previously issued to another, or for the registration of which another had previously made

application, or which so nearly resembles such trade-mark or a known trade-mark owned and used by another, and is in the opinion of the commissioner likely to be mistaken therefor by the public, an interference will be declared.

Any person who believes he will be damaged by the registration of a trade-mark may oppose the same by filing in duplicate a written notice of opposition, setting forth the grounds of objection. Such notice of opposition is required to be filed within thirty days after the publication of the trade-mark. If any person considers himself to be injured by the registration of a trade-mark in the Patent Office, he may at any time make application to the Commissioner of Patents to cancel the registration thereof. Such application must be filed in duplicate and set forth fully the grounds upon which cancelation is asked.

After the requirements of the law have been complied with, and the Patent Office has held a trade-mark to be registrable, a certificate will be issued, signed by the Commissioner of Patents, under the seal of the Patent Office, to the effect that the applicant has complied with the law and that he is entitled to the registration of his trade-mark. A certificate of registration of a trade-mark shall remain in force for the period of twenty years from its date, except that in case a trade-mark has been previously registered in a foreign country, such certificate shall cease to be in force on the day on which the trade-mark ceases to be protected in such foreign country, and shall, under no circumstances, remain in force more than twenty years unless renewed.

The law provides that a certificate of registration may be renewed from time to time for like periods. Application for renewal may be made at any time not more than six months prior to the expiration of the period for which the certificate of registration was issued or renewed.

Assignments.

Any registered trade-mark and every trade-mark, for the registration of which application has been made, is assignable in connection with the good-will of the business in which the trade-mark is used. Such assignment must be made in writing and should be recorded in the Patent Office. No assignment will be recorded unless in the English language and unless an application for the registration of the trade-mark shall have been first filed in the Patent Office. The assignment must identify the application by a serial number and filing date, or when the trade-mark has been registered, by the certificate number and date of issue. An assignment of a trade-mark is void by law, as against

any subsequent purchaser without notice, unless it has been recorded in the Patent Office within three months from the date of its issue. The certificate of registration may be issued to the assignee of the applicant, but it is necessary that the assignment must be first entered of record in the Patent Office. The official gazette of the Patent Office contains a list of all trade-marks registered, giving in each case a statement of address of the applicant, the date of filing and serial number of application, and the date of publication of the trade-mark in the official gazette. The United States statutes concerning the registration of trade-marks with the rules of the Patent Office relating thereto may be obtained upon request to the Commissioner of Patents.

The duty is imposed by law upon every registrant to give notice to the public that the trade-mark is registered, either by affixing thereon the words, "Registered in the United States Patent Office," or "Reg. U. S. Pat. Off.," or when, from the character and size of the trade-mark, or from its manner of attachment to the article to which it is appropriated this cannot be done, then by affixing a label containing a like notice to the package or receptacle wherein the article or articles are inclosed; otherwise if suit for infringement of the trade-mark is brought, no damages can be recovered except on proof that the defendant was duly notified of infringement and continued the same after such notice.

As a protection to domestic manufacturers and traders, congress has provided by law that no article of imported merchandise shall be admitted to entry at any custom house of the United States which shall copy or simulate the name of any domestic manufacturer or trader, or of any manufacturer or trader located in any foreign country which by treaty affords similar privileges to citizens of the United States, or which shall copy or simulate a trade-mark registered in accordance with the laws of this country. It is further provided that no imported goods shall be admitted into the custom houses of the United States which shall bear a name or mark calculated to induce the public to believe that the article is manufactured in the United States.

Abandonment.

A trade-mark, whether it consists of symbol or name, may be abandoned, and if it is it may then be appropriated by any one, who by so doing adopts it as his own, or after it is abandoned, it may be resumed by the original proprietor, and readopted by him. It has been held that the consent of a manufacturer

to the use or imitation of his trade-mark by another may be inferred from his knowledge and silence. A complete disuse of a trade-mark amounts to an abandonment thereof, and thereafter the same may be appropriated by others.

The transfer of the property and effects of a business carries with it the exclusive rights to use such trade-marks or trade names as have been used in such business, these incidents being attached to the business or right of manufacture and pass with it, for, as has been pointed out previously, a trade-mark has no separate existence, there being no property in words, as detached from the thing to which they are applied. Therefore, a conveyance of the thing to which a name or trade-mark is attached carries the same with it.

It is possible for a person to assign lawfully and sell, not only a trade-mark indicative of origin in himself, but even the right to use his own name in connection with a particular business, and the assignee will thereby become entitled to the exclusive use of the name, even as against the assignor. Of course, a person is entitled to use his own name in conducting a business or in connection with others, if done in a proper and legitimate way, and this is a very valuable right especially when he is the discoverer of a valuable article of trade then being manufactured and sold in the market. But this right, the same as other property rights, is subject of sale or transfer and any person who has carried on business under a trade name, or who has made and sold a particular article in such a manner as by the use of his name to cause the business to become known and established in favor under such name, can sell or assign the same when he sells his business and thereby deprive himself of the further use of his own name. When a partnership is formed to manufacture the article to which a trade-mark is properly applied, the trade-mark of one partner becomes part of the partnership property. If a partnership is doing business in two cities, and expires by limitation of time, and one of the partners continues to conduct the business at the old location in one city, he would acquire the right to do so, and the same right would also exist in favor of the other partner conducting the same business in the other city.

Where a trade-mark consisting of the name of an individual was used to denote an article made by a firm of which he has been a member the court held that such a name was not guaranty that the goods were made by the individual personally; that the use of the name by an assignee was not a fraud upon the public and consequently the sale of the right was valid.

It is well to remember in connection with the sale or assignment of trade-marks that a trade-mark cannot be levied upon and sold under execution as a species of tangible property unless a local statute confers such right. A statute is not to be construed, however, as authorizing any one to purchase a trade-mark and affix it on his own product where such a construction would permit of a fraud or deception upon the public.

We have heretofore referred to unfair competition in trade, and as there are few questions of more importance to the business man, we will inquire briefly into the elements constituting such unlawful competition.

The law of unfair competition in trade is of comparatively recent development, but a set of rules has now been adopted by our courts by which persons who have no technical trade-marks are protected in the use of personal and descriptive name-marks, labels, forms of packages and wrappers or other insignia which have become associated with their business or products. Competition is the life of trade, but it is the policy of the law to foster honest competition, and no court will countenance fraud or dishonesty under the guise of business competition. Concisely stated, the law will prevent rival manufacturers from beguiling the public, by means of imitative devices, into buying their products under the false impression that they are purchasing a rival's goods. In this connection it is important to distinguish between the infringement of a trade-mark and unfair competition. The former consists in the unlawful use by one of the trade-mark of another, whereas unfair competition is the simulation by one of the packages and products of another for the purpose of deceiving the public. Two rivals in business may have an equal right to use the same words, marks or symbols on similar articles manufactured by both, but if such words, marks or symbols were used by one before the other, the latter may be restrained by legal process from using the same marks on similar goods.

The right to use a corporate name is also involved in the subject under discussion. Ordinarily such right is protected by positive statute, and may also be protected as a trade name. If not, it will be protected under the general principles which govern unfair competition. Thus, the outgoing stockholders of a corporation, the most distinguishing part of whose names the corporation bears, have no right to compete in business under a corporate name so nearly like the first as to mislead customers. A corporation is, therefore, compelled to adopt a name sufficiently distinctive as to avoid becoming confused with the corporate name of a competitor. Many products, particularly compounds,

medicines, etc., are manufactured under secret, but not patented, processes. It can readily be seen that unless the law prevented, an employee could learn the secrets of his employer and set up an establishment of his own, and appropriate valuable processes for his own profit. The manufacturer of such articles or products, to prevent such a contingency, generally requires his employees to agree not to disclose or use the trade secrets imparted to them. The law, whose policy it is to establish and maintain a high standard of business morality, will enforce such an agreement and hold liable any employee who is guilty of a breach thereof.

If a member of a partnership obtains information of a secret nature while transacting partnership business he will be liable to account to the firm for any profit he may obtain from the use of such information. Frequently an employee who severs his connection with his employer to engage in business for himself advertises the fact of his former employment. The mere advertisement of the "late with" any well-known firm, even when done for the purpose of drawing a part of the custom of the old firm, is not in itself unfair competition.

A merchant has no right to apply the name of a well-known article or commodity to goods of inferior quality. Every one has doubtless heard of Dr. Jaeger's sanitary woolen underwear. Dr. Jaeger was a scientist who gave to the world a system of all-wool underwear. He was a philanthropist, not a manufacturer or dealer. Under an agreement with the scientist, a firm made and sold such underwear in strict accordance with the system. A competitor adopted Dr. Jaeger's name to designate the kind and quality of his goods, but sold as the same kind of underwear an inferior article containing more or less cotton. It was held by the court that such use of Dr. Jaeger's name was a deceptive misrepresentation and constituted unfair competition.

A court will issue an injunction to prevent unfair competition consisting of the use of signs or tokens which serve to confuse the identity of one man's business with that of another. A manufacturer's distinctive advertisements cannot be imitated by devices which involve nothing original, and, although not identical in every regard, are so similar as to be readily mistaken for the original by the ordinary purchaser.

There is no especial right to the use of a family name which has become a trade-mark applied to a manufactured article by reason of the relation which the descendants bear to the original manufacturer of the same name. In a quite recent case the defendants were the selling agents of the "Remington-Sholes" typewriters, which were manufactured by the descendants of

the original Remingtons. The descendants of the original manufacturers became members of a corporation which made a typewriter under the name of "Sholes," which was then changed to the "Remington-Sholes." As a purchaser of the typewriter might be led to think that the addition of the name "Sholes" was a new style of the old machine coming from the same source, the use of the name "Remington" was held to be an attempt to deceive the public and was therefore unlawful.

A manufacturer may indicate his goods by a particular label or wrapper, and he will be protected in its use. Such labels are used for the purpose of distinguishing the goods to which they are attached from those manufactured by other parties, and when another person uses the same label or a colorable imitation thereof the result is the same as in the case of the imitation of a trade-mark. A court of equity will restrain the person from selling labels to parties who use them in unfair competition with the business of another; a person may acquire an exclusive right to use a package of a fixed shape, style and dimensions, with emblems, labels or other devices thereon. Thus, in a well-known case, where the general appearance of the bottles and labels used in marketing a preparation known as "Castoria" was so nearly like that used by another party for many years in the sale of his preparation under the same name, as to deceive the ordinary purchaser, it was held that the right to an injunction was not defeated because changes had been made in the shape and color of the bottle and in the tint of the label, where the changes were so slight as not to attract general attention.

In conclusion, it may be stated, in the language of a noted jurist, that the theory upon which the law regulating business competition is founded, is to protect the user of a name, mark, label or other device which is of value to him, from attack by "the piratical craft which infest the seas of modern business."

APPLICATION FOR TRADE-MARKS

PETITION AND STATEMENT FOR AN INDIVIDUAL

To the Commissioner of Patents:

, a citizen of , residing
(Name of applicant) (Citizenship of applicant)
at , and doing business at
(Applicant's address) (Business address)
, has adopted and used the trade-mark shown in the accompanying drawing for , in ,
(Particular description of goods)

, and presents herewith five
(Particular description of goods) (specimens or facsimiles)
showing the trade-mark as actually used by applicant upon the goods, and requests that the same be registered in the United States Patent Office in accordance with the act of .[1] *The trade-mark has been continuously used and applied to said goods in applicant's business since . The trade-mark is applied*
(Earliest date of use)
or affixed to the goods, or to the packages containing the same by
(State mode or modes of application)

(Applicant's full signature)

PETITION AND STATEMENT FOR A FIRM

To the Commissioner of Patents:

, a firm domiciled in ,
(Firm name) (Domicile)
doing business at , and composed
(Business address)
of the following members,
(Name members of firm)
, all citizens of , has adopted
(Citizenship of members of firm)
and used the trade-mark shown in the accompanying drawing for ,
(Particular description of goods) (Number and title of class.)
and presents herewith five showing the trade-mark as
(Specimens or facsimiles)
actually used by applicant upon the goods, and requests that the same be registered in the United States Patent Office, in accordance with the act of . The trade-mark has been continuously used and applied to said goods in applicant's business since . The trade-mark is applied or affixed to the goods,
(Earlies date of use)
or to the packages containing the same,
(State mode or modes of application)

(Firm name)

(Full signature of a member of the firm)

PETITION AND STATEMENT FOR A CORPORATION

To the Commissioner of Patents:

, a duly organized under
(Name of applicant)
the laws of the , and located at , and
(State or country under the laws of which organized) (Location of corporation)

[1] *If application is made for registration under the act of March 19, 1920, this date should be accordingly changed.*

doing business at , *has adopted*
(Business address)
and used the trade-mark shown in the accompanying drawing for

(Particular description of goods) (Number and title of class)
and presents herewith five *showing the trade-mark as*
(Specimens or facsimiles)
actually used by applicant upon the goods, and requests that the same be registered in the United States Patent Office in accordance with the act of .[1] *The trade-mark has been continuously used and applied to said goods in applicant's business since* . *The trade-mark is applied or affixed to the*
(Give earliest date of use)
goods, or to the packages containing the same by
(State mode or modes of application)

(Name of applicant)

(Full signature of officer)

(Official title)

DECLARATION FOR AN INDIVIDUAL

State of
County of } *ss:*

, *being duly sworn, deposes and says that he is*
(Name of applicant)
the applicant named in the foregoing statement; that he believes the foregoing statement is true; that he believes himself to be the owner of the trade-mark sought to be registered; that no other person, firm, corporation, or association, to the best of his knowledge and belief, has the right to use said trade-mark in the United States, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that said trade-mark is used by him in commerce among the several States of the United States (and between the United States and foreign nations or Indian tribes)[2]; that the description and drawing presented truly represent the trade-mark sought to be registered; and that the *show the*
(Specimens or facsimiles)
trade-mark as actually used upon the goods.

(Full signature of applicant)

Subscribed and sworn to before me, a , *this* *day*
(Official title) (Date of
of
execution)

[SEAL.]

(Official title)

[1] *If application is made for registration under the act of March 19, 1920, this date should be accordingly changed.*

[2] *If applicant does not have commerce with foreign nations or Indian tribes, this clause should be omitted.*

COPYRIGHTS

Origin and Development—How Secured—Infringement—Publication.

NO BETTER title to property can exist than that acquired by production, on the principle that to him belongs the harvest whose toil has produced it; to him the fruit who has planted the tree. This is the natural mode of acquiring property. Ownership, therefore, is created by production, and the producer becomes the owner, which principle applies to all kinds of labor, whether of the body or of the mind. As to works of imagination and reasoning, if not of memory, the author may be said to create, and in all departments of mind new books are the product of the labor, skill and capital of the author. The subject of property is the order of words in the author's composition; not the words themselves, which may be said to be analogous to the elements of matter, which cannot be appropriated unless combined. The nature of the right of an author in his works is analogous to the rights of ownership in other personal property.

The origin of the sole rights of an author to publish his book for a limited period of years may be placed in the reign of Queen Anne of England (1710), when Parliament passed an act for the encouragement of learning, although the exclusive right reserved to an author is believed by some to exist independently of statute. Blackstone in his famous "Commentaries on the English Law" says: "The identity of a literary composition consists entirely in the sentiment and the language; the same conceptions, clothed in the same words, must necessarily be the same composition, and whatever method be taken of exhibiting that composition to the ear or the eye of another, by recital, by writing, or by printing, in any number of copies, or at any period of time, it is always the identical work of the author which is so exhibited; and no man can have a right to exhibit it, especially for profit, without the author's consent."

Before publication an author has in the fruits of his intellectual labor a property as whole and as inviolable as that which exists in material possessions; he has supreme control over such productions; may exclude others from their enjoyment and dispose of them as he pleases. It is undoubted that an author has such powers while his work is in manuscript. When, however,

an author publishes his work, his right to exclusively control the same depends upon statute law.

The first legislation on the subject of literary property in the United States appears at the close of the Revolutionary War, when Massachusetts and Connecticut passed a law to secure to every author the profits that might arise from the sale of his works. Article I, section 8, of the Constitution of the United States empowered congress "To promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries." In pursuance of this power congress has enacted certain laws regulating copyrights, which it will be our purpose briefly to consider.

The law regulating copyrights at present prevailing, is to be found in the act of congress, dated March 4, 1909, which went into effect on July 1, 1909.

The right to protection vests immediately upon the publication of such work as comes within the purview of the statute with notice of copyright, which shall consist either of the word "copyright," or the abbreviation "cpr.," accompanied by the name of the copyright proprietor, and the year, and such notice shall be affixed to each copy thereof published or offered for sale in the United States, by authority of the copyright proprietor. As soon as a copyright has been secured by publication of the work with the notice of copyright as above set forth, registration thereof should be made by depositing two complete copies of the best edition thereof with the Register of Copyrights in the office of the Librarian of Congress. If a book or other publication is sought to be copyrighted, notice thereof shall be placed on the title page or the page immediately following.

The works for which copyrights may be secured shall include, generally speaking, all the writings of an author. Any book, periodical, newspaper, lecture, sermon or address prepared for oral delivery, dramatic or musical compositions, maps, works of art, models or designs for works of art, photographs, prints, pictorial illustrations, and drawings or plastic works of a scientific or technical character constitute proper subject-matter for copyrights.

The privileges conferred by the act may be enjoyed for a period of twenty-eight years, and may in certain cases be renewed for a further term of twenty-eight years provided application therefor be made within one year prior to the expiration of the term of the original copyright.

It is required that applicants for registration of copyrights

shall be citizens of the United States or citizens of countries granting reciprocal copyright privileges, which shall be determined by proclamation by the President of the United States. With but few exceptions, the mechanical labor in connection with the publication of a work forming the subject-matter of copyrights must be performed within the United States in order to entitle the author or proprietor thereof, to the protection of the law. Affidavit to this fact must accompany the application for registration.

The cost of obtaining registration is one dollar, which sum includes a certificate of registration.

Upon securing registration of a claim for copyright, the owner or proprietor thereof, shall have the power to print, reprint, publish, copy, and vend the copyrighted work. He is also vested with the right to translate the copyrighted work to other languages and dialects, if it be a literary work; to deliver or authorize the public delivery of the copyrighted work for profit if it be a lecture, sermon, address or similar production; and to perform same if it be a dramatic work or musical composition.

The owner or proprietor of a copyrighted work may prevent its infringement by resorting to the equitable remedy of injunction. Damages may also be recovered to compensate for the loss or injury effected by the infringement and in the event that infringement is wilful, same may be punished by fine and imprisonment.

Publication.

It is important to understand clearly what constitutes a publication as an intellectual production. To publish a thing is to make it public by any means or in any manner in which it is capable of being communicated to the public. Literary, dramatic and musical compositions may be published by being read, represented or performed, or by the circulation of printed or manuscript copies. Paintings and works of sculpture are published when they are exhibited to the public. A person has no right to report a lecture or other written discourse which its author delivers before a public audience, and which he desires again to use in like manner for his own profit, and to publish it without his consent, or to make any use of a copy thus obtained. The student who attends a medical lecture may have a perfect right to remember as much as he can and afterward to use the information thus acquired in his own medical practice, or to communicate it to students or classes of his own, without involving the right to commit the lecture to writing for the purpose

of publishing it subsequently, either in print or by oral delivery. On the same principle it has been held that any one of an audience at a concert or opera may play a tune which his ear has enabled him to catch, or sing a song which he may carry away in his memory, for his own entertainment or that of others, but he would have no right to copy or publish the same.

An immoral, seditious, blasphemous or libellous work cannot be copyrighted, and consequently if the author has published a work of this kind he cannot prevent any one else from republishing it.

Unless copyright is claimed by printing a notice to that effect, a work once published becomes public property. A letter written in the course of an ordinary correspondence is the literary property of the writer, and the party receiving such a letter has no right to make its contents public. The law on this point was established as early as 1741, when the court restrained a certain bookseller from publishing the private correspondence between Alexander Pope and Dean Swift. This doctrine is not based on considerations of policy or social ethics, but on the ground that the writer has a property interest in his own letters.

The word "book" as used in the copyright statutes has a wide significance. It need not be a volume made up of several sheets bound together. The literary property intended to be protected by the act is not determined by the size, form or shape in which it makes its appearance, but by the subject-matter of the work. In fact, it has been held that a diagram with directions for cutting garments, printed on a single sheet, was a book within the meaning of the statute.

The name or title of a book, magazine or newspaper cannot be copyrighted, a title being treated as a trade-mark. Any subsequent editions of a work not differing from the first are protected by the original copyright. Compilations which comprise selecting, arranging and combining old material in a new form may be copyrighted.

An advertisement which has no other use or value than to make known the place and kind of business of the advertiser is not within the scope of the copyright law. But information and the results of learning valuable to others than the advertiser may be contained in an advertisement. For example, a dealer may give interesting facts concerning bronzes, pottery, furniture or other articles in an advertisement. If so, he would be entitled to protect the same by copyright.

The test of what may be copyrighted is originality. In the most original works of modern genius thoughts and sentiments

are found as old as language itself. Strictly speaking, nothing is original, but the object of the law is to promote learning and useful knowledge by protecting the fruits of intellectual activity. Hence the term "originality" has a very broad meaning in connection with copyrights.

Piracy.

Piracy is the use of literary property in violation of the legal rights of the owner. The true test of piracy is not whether a composition is copied in the same language or the exact words of the original, but whether its substance is reproduced.

The law encourages certain uses of a copyrighted work. A critic or reviewer may make liberal quotations from the original work, with or without acknowledgment of the source, and either for favorable or unfavorable comment.

The owner of a copyright may license another to publish his work as well as assign his interest thereunder. Joint owners of a copyright may make a contract among themselves as to printing and publishing their work, and one of them cannot set up as against another his original rights as a joint owner in violation of such contract.

How to Obtain Copyright.

The most convenient way in which to obtain exact instructions for the copyrighting of any work is to write to the Register of Copyrights, Washington, D. C., describing the character of the work to be copyrighted, and asking for the necessary blanks upon which to register it.

Under the old law, which was in effect prior to July 1, 1909, it was necessary to register the title of a book or other work on which copyright was desired on or before the day of actual publication. This has been changed by the present law.

In publishing a work under copyright protection it is first of all necessary to print the words.

COPYRIGHT (YEAR),
BY (NAME OF COPYRIGHT CLAIMANT).

upon the title page, or the page immediately following, of the article, if it be a book, periodical, dramatic or musical composition. The copyright notice may consist of the word "Copyright" or the abbreviation "Copr." accompanied by the name of the copyright proprietor, if the work be a photograph, map, design for a work of art, reproduction of a work of art, drawing of a scientific or technical character, print or pictorial illustration.

Indeed any of these classes of works may even be copyrighted by printing on their face the letter C enclosed within a circle accompanied by the initials, monogram, mark, or symbol of the copyright proprietor, provided that on some accessible portion of such copies, or on the margin, back, permanent base, or pedestal, or of the substance on which such copies shall be mounted, his name shall appear.

After a work has been published, and that means issued to the public, or publicly sold, it should be registered at the Copyright Office, and this should be done upon the blanks which are furnished by the Register of Copyrights. As the application for registration must specify the class of copyrightable subjects to which the work in question belongs, it is desirable to describe it to the Register of Copyrights sufficiently for him to send to the intending applicant the proper blank for this purpose. Full directions for making this registration will be supplied by the Register of Copyrights, so that any person can clearly understand how to do it. The application for copyright is accompanied by an affidavit of American manufacture, giving the facts as to where and when the work for which copyright is desired was made. The application should be returned to the Register of Copyrights at Washington accompanied by a fee of $1.00, and upon due entry of this the certificate of copyright will be returned to the applicant.

It is not obligatory immediately to register copyrights, but it is necessary before any action at law can be taken by the owner of the copyright for infringement of his rights by others, and, therefore, it is desirable to make application as soon as convenient after the publication of the work.

After the copyright has been secured by publication of the work with the notice of copyright as above stated, there shall be promptly deposited in the Copyright Office, or placed in the mail addressed to the Register of Copyrights, Washington, D. C., two complete copies of the work thus published, which copies, if the work be a book or periodical, shall have been manufactured in the United States of America; or if such work be a contribution to a periodical, for which contribution special registration is required, only one copy of the issue or issues containing such contribution is required. No action or proceeding at law shall be maintained for an infringement of copyright in any work until the deposit of copies or registration of such work shall have been complied with. It is not necessary to prepay the postage on the articles, which are deposited in accordance with this law, as the postmaster to whom they are delivered must give, if requested,

a receipt for them and mail them to their destination without cost to the copyright claimant.

Registering Copyright of Unpublished Works.

Copyright may also be obtained for the work of an author of which copies are not reproduced for sale by sending to the Register of Copyrights, with a blank properly filled out, one complete copy of such work, if it be a lecture or similar production or a dramatic or musical composition; of a photographic print if the work be a photograph; or of a photograph or other identifying reproduction if it be a work of art or a plastic work or drawing. If a work which has been thus copyrighted before publication shall later be published, deposit of copies must be made with the Register of Copyrights as above explained, in reference to works which are copyrighted by publication with a printed claim of copyright on them.

ASSIGNMENT OF COPYRIGHT

THIS INDENTURE, *Made the day of , 19 , between of , hereinafter called the vendor, of the one part, and of , hereinafter called the purchaser, of the other part: Whereas the said vendor is the author and absolute proprietor of the copyright of a book or work entitled, etc.; and has agreed with the said purchaser for the absolute sale to him of the said copyright free from incumbrances, at the price of dollars; Now this indenture witnesseth, that, in pursuance of the said agreement, and in consideration of the sum of dollars by the said purchaser to the said vendor now paid, the receipt whereof is hereby acknowledged, the said vendor hereby assigns, and as absolute owner conveys, unto the said purchaser, his executors, administrators, and assigns, the unincumbered copyright of and sole privilege of printing all that the said book or work entitled, etc.; and all future impressions of the said work. To have, hold, exercise and enjoy the said copyright and premises unto the said purchaser, his executors, administrators, and assigns, henceforth during the residue of the term of the said copyright now unexpired, for his and their own use and benefit, but subject always to such right as may now be subsisting in the publisher or proprietor of the last edition of the said book or work to prevent the publication of any future edition of the same until such last edition shall be out of print.*

IN WITNESS, *etc.*

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United States Patent Rights of
August 27, 1918
June 4, 1907
Dominion of Canada Patent Rights of
June 24, 1919